

Exhibit E

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW JERSEY

3 -----
4 SMART VENT PRODUCTS, INC., : Civil Action No.
5 : 1:13-cv-05691
6 Plaintiffs, :
7 vs. :
8 :
9 CRAWL SPACE DOOR SYSTEM, INC. :
10 D/B/A CRAWL SPACE DOOR :
11 SYSTEMS, INC., :
12 :
13 Defendant. :
14 -----

15 -- --
16 JANUARY 29, 2016
17 - - -

18 Transcript of the deposition of MICHAEL
19 J. GRAHAM, called for Oral Examination in the
20 above-captioned matter, said deposition taken
21 by and before MARGARET M. REIHL, A Registered
22 Professional Reporter, Certified Shorthand
23 Reporter and Notary Public, at the offices of
24 WHITE & WILLIAMS LLP, 457 Haddonfield Road,
25 Suite 400, Liberty View, Cherry Hill, New
Jersey, commencing at 9:33 a.m., there being
present:

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1 ... MICHAEL J. GRAHAM, having been duly
2 sworn as a witness, was examined and testified
3 as follows ...

4 BY MR. ONUFRAK:

5 Q. Good morning, Mr. Graham. As you know, my name
6 is Michael Onufrak, attorney with White & Williams,
7 representing Crawl Space Door System, Inc. With me is
8 my colleague, Siobhan Cole. We're going to take your
9 deposition this morning as the corporate representative
10 of Smart Vent.

11 Do you understand you are one of the corporate
12 representatives of Smart Vent?

13 A. Yes.

14 Q. Have you ever been through a deposition before?

15 A. No.

16 Q. I'm going to ask you the questions. Let me
17 finish the question and then give an answer. When you
18 give an answer, try to make sure it's oral. Keep your
19 hand away from your mouth and give an oral answer
20 instead of saying uh-huh because she can only take down
21 yes or no or whatever your answer might be.

22 A. Okay.

23 Q. So we have a lot of material to cover and many
24 different topics, so we're going to proceed slowly at
25 first until we get the hang of it so we can get as

1 Q. That was done for Crawl Space Door vents?

2 A. It was done for our vent. It was done for
3 Crawl Space Door vents, and any time we find something
4 that we want to measure, we use that technique because
5 it's the most accurate.

6 Q. Has that technique been used on all the 50 or
7 so nonengineered vents that you've found?

8 A. No, because it's stamped on the face of all but
9 Crawl Space Doors, I think.

10 Q. Are there any other engineers employed by the
11 company?

12 A. No.

13 Q. You mentioned consulting engineers. Are there
14 consulting engineers who are employed on a regular
15 basis by the company?

16 A. No. Well, actually one, Ed Novack was an
17 engineer that we -- before we brought -- Jim has been
18 with us for many a year. Ed Novack that did a lot of
19 our AutoCAD, he wasn't involved in any of this.

20 Q. How many consulting engineers has the company
21 employed, say, in the last five years?

22 A. I'm thinking maybe eight.

23 Q. Have any of them been employed to look at Crawl
24 Space Door vents?

25 A. Yes.

1 Q. Who are they?

2 MR. DiMARINO: With the exception of the
3 individual we discussed, you can answer that question.

4 THE WITNESS: Okay. Bill Coulbourne.

5 BY MR. ONUFRAK:

6 Q. How do you spell that?

7 A. C-o-l-b-o-u-r-n. And so I would say just Bill.

8 Q. How about Rebecca Quinn?

9 A. No.

10 Q. Has the company employed her as a consulting
11 engineer?

12 A. Yes.

13 Q. On what occasions?

14 A. Back when we first started our business, she
15 was very knowledgeable in both the NFIP and the
16 building code requirements, and so in 2002 and '03 --
17 2001, maybe as far back as then, we would ask for her
18 assistance to help us understand the rules on
19 certification process, the building code and the NFIP
20 requirements.

21 Q. But she was not employed to look at Crawl Space
22 Doors' vents?

23 A. Correct.

24 Q. What specifically did Mr. Coulbourne do with
25 regard to Crawl Space Door vents?

1 A. If I remember correctly, and we do a lot of
2 stuff, I think that we asked him to confirm our
3 measurements.

4 Q. What time period would he have confirmed those
5 measurements?

6 A. I'm not sure.

7 Q. Could you give a reasonable estimate?

8 A. I'm going from the documents that I've read,
9 going back, you know, I'm going to say, I don't know, I
10 could say 2005, but I'm not sure.

11 Q. Let me hand you what we'll mark for
12 identification as Smart Vent-5, which is the answers to
13 Defendant's Second Set of Interrogatories.

14 (Document marked for identification as
15 Smart Vent Deposition Exhibit No. 5.)

16 BY MR. ONUFRAK:

17 Q. Let me direct your attention to Interrogatory
18 Number 22, which is on Page 11. It refers there to
19 something called Smart Vent's Non-Engineered Opening
20 Guide, Volume 1, dated January 2015.

21 Are you familiar with that document?

22 A. Yes.

23 Q. And it says there, "the vent located at the
24 bottom of Page 8 was included as an example of a
25 nonengineered opening found in the field."

1 hired by Crawl Space Doors; isn't that correct?

2 A. Yes.

3 MR. ONUFRAK: Now, I'm going to skip a
4 whole lot of e-mails here I think were for Topic 2,
5 because they're all in Mr. Little's name, so I'm going
6 to ask him later. So if we have to go back to
7 Mr. Graham, I know you won't object, but I want to keep
8 moving along.

9 MR. DiMARINO: Okay.

10 BY MR. ONUFRAK:

11 Q. Turning to Topic Number 3, it refers to
12 Architectural Testing, Inc.

13 Are you familiar with that company?

14 A. Yes.

15 Q. What is that company?

16 A. They are a company certified by the ICC-ES to
17 conduct and oversee testing for evaluations with
18 building products.

19 Q. That is a prestigious company; is it not?

20 A. I suspect it is.

21 Q. Has Smart Vent ever done business with ATI?

22 A. Yes.

23 Q. On what occasions?

24 A. Multiple occasions. They did our first -- they
25 witnessed and performed our first -- all of our

1 This really isn't my -- this isn't what I do so I'm
2 going from my --

3 BY MR. ONUFRAK:

4 Q. Sure about what?

5 A. That we took off the word only because the term
6 FEMA accepted has always been an acceptance by FEMA in
7 writing that our product was accepted. That's what
8 FEMA tells us to use as a term, meaning FEMA accepted,
9 but we're not going to say that Flood Flaps is not FEMA
10 accepted, because they certainly have done everything
11 correctly.

12 Q. How is it that FEMA accepted the Smart Vent
13 products?

14 A. So in around 2000 we went to FEMA and said,
15 and, obviously, I didn't know anything about the flood
16 vent business, we went to them and we went to the
17 building officials and building code and said what do
18 we need to do to test and certify the product, and they
19 said we do not test products. You need to go to a --
20 and they gave us a very clear -- and there's a letter
21 from Cliff Oliver, I think, that outlined in 2000 or
22 1999 the path to have FEMA accept our product, and that
23 was that we have to get an evaluation, a formal
24 evaluation done, and then we followed that to the T,
25 and it took us two years, but then we asked for a

1 A. Yes.

2 Q. What other competitors, if any, are there?

3 A. So I'd say that's those.

4 Q. To the best of your knowledge at this time
5 there's five competitors, Smart Vent, Flood Solutions,
6 Crawl Space Doors, Cooke and USA Flood Vents?

7 A. Flood Flaps put on there.

8 Q. Flood Flaps.

9 Now, the expert on Page 23 says she could not
10 find any available market share data for this
11 particular product.

12 A. For which particular product?

13 Q. Flood vents. She says on Page 23, "I performed
14 independent research to identify any publicly available
15 market share data or industry publications relating to
16 engineered or nonengineered flood vents. I was unable
17 to identify any relevant market share information for
18 these products."

19 She goes on to say, "I spoke to Mr. Graham and
20 learned that he agrees that industry market share data
21 is unavailable for flood vents."

22 Is that right?

23 A. I would say yes.

24 Q. And it says, "It is his belief that subsequent
25 to the entry of additional competitors into the market

| <u>WORD</u> <u>INDEX</u> | | | | |
|-----------------------------|------------------------|----------------------|-----------------------|-----------------------|
| < \$ > | 1 3:7, 24, 24 | 154510 130:23 | 106:12 114:17, | 50:12 89:19, |
| \$1,600 143:22 | 8:4, 7 9:13 | 154520 130:23 | 20, 23 115:12 | 24 108:16 |
| \$10 132:19 | 14:6 16:14, 14 | 16 3:24 4:12 | 2004 23:9, 21 | 2414 46:15 |
| 145:6 | 26:11, 20 | 5:3 80:5 | 26:7 | 25 4:22 90:14 |
| \$10.1 132:13 | 30:20 31:7, 13 | 84:10 | 2005 23:20, 21 | 142:14 |
| \$115.38 143:5 | 32:17 43:22 | 1650 2:9 | 26:7 30:10 | 250 25:1 |
| \$20 144:23 | 79:8 103:2 | 16-inch 24:24 | 60:21 108:16 | 26 4:3, 23 |
| \$200 143:15, | 144:22 | 17 4:14 35:19 | 109:6, 19 | 19:8 81:4 |
| 18 | 1,000 140:20 | 83:19 117:3 | 2006 47:11, 14 | 84:20 91:11 |
| \$205 143:15 | 141:6 | 144:20 | 60:24 | 142:17 |
| \$228.01 143:7 | 1,000s 17:7 | 18 4:15 98:4 | 2007 88:5 | 27 4:12 5:1 |
| \$4.4 132:15 | 10 4:1, 1 10:1 | 138:7 | 143:4, 25 | 95:8 98:9 |
| \$40 145:2 | 59:3 78:12, 12 | 1800 2:9 | 2008 9:22 | 144:8 |
| \$450 143:19 | 10:25 62:23 | 1850 17:17 | 103:5 109:23 | 28 5:1 102:11 |
| \$5.2 132:14 | 10:31 62:24 | 187 125:24 | 110:11 121:25 | 29 1:9 5:3 |
| \$785 143:7 | 102 5:3 | 19103 2:10 | 144:22 | 104:14 106:20 |
| < : > | 104 5:5 | 1988 12:8 | 2009 65:2, 22 | < 3 > |
| :1:13-cv-05691 | 108 5:7 | 1998 10:15 | 70:2 72:2, 5 | 3 3:13 14:14, |
| 1:4 | 11 3:24 4:1, 1, | 1999 16:15 | 2010 125:8 | 17 45:20 |
| :Civil 1:3 | 12 5:1, 3, 8, 11 | 94:22 96:17 | 2011 53:9 | 47:19 51:11 |
| < 0 > | 30:18 50:13, | 98:7 126:1 | 54:11 58:25 | 77:25 84:9 |
| 0000127 5:17 | 16 65:6 78:12, | < 2 > | 84:13 87:15 | 132:12 |
| 0000279 5:21 | 12 95:21, 21 | 2 3:10 4:1, 9 | 2012 38:12 | 30 3:18 4:6 |
| 0000430 5:19 | 11:16 89:16 | 5:5 8:18, 22 | 39:8 | 5:5 6:2 |
| 0009858 5:3 | 110 5:8 | 10:5 18:3, 4 | 2013 55:12 | 108:11, 13 |
| 0027881 4:11 | 114 5:11 | 22:23 26:21 | 75:6, 16 80:1 | 30th 129:24 |
| 0027883 4:13 | 116 5:13 | 31:7, 23 37:3 | 81:4 118:6 | 31 5:8 109:24 |
| 0031089 4:1 | 11th 102:16 | 45:10 51:4 | 119:19 | 110:1 |
| 0031147 5:11 | 118:6 | 57:23 | 2014 132:13 | 316 13:13 |
| 0033225 5:5 | 12 3:21 4:5, 9 | 2,464,134 | 137:1, 7, 10, 13, | 32 3:20 5:8 |
| 0034139 5:15 | 20:24 22:11 | 84:12, 18 | 19 145:4 | 114:2, 7, 9 |
| 0035436 4:9 | 39:7, 9 67:10, | 2:04 129:17 | 2015 3:20, 21 | 33 5:11 116:1, |
| 0036192 4:14 | 14, 16, 18, 25 | 2:12 129:18 | 6:2 30:20 | 3 |
| 03 5:1, 3, 11 | 89:21 97:3 | 2:38 145:13 | 31:13 32:17 | 34 5:14 122:2 |
| 29:16 74:15 | 12:57 89:17 | 20 106:1 | 37:4, 9 117:24 | 35 5:15 |
| 04 5:3 | 122 5:15 | 141:11 | 129:24 143:25 | 125:22 |
| 05 5:5 | 125 5:17 | 200 23:16, 23 | 2016 1:9 3:24 | 36 5:17 |
| 050 125:18 | 126 5:19, 21, | 24:6, 24 | 41:24 148:12 | 125:24 126:4 |
| 08 5:8, 14 | 23 | 140:19 | 21 5:3, 11 | 36127 86:22 |
| 145:3 | 129 6:2 | 2000 10:18 | 97:7 106:12 | 36130 87:13 |
| 08001 123:3 | 12th 125:8 | 14:2 16:15 | 134:24 | 36131 87:13 |
| 08033 2:4 | 13 4:7, 9, 12 | 94:14, 21 | 215 2:10 | 36141 88:3 |
| 0883 46:13, 13 | 67:10, 14, 16, | 2001 10:20 | 22 3:16 30:18 | 36173 88:8, 12 |
| 09 4:1, 3, 7 | 19, 20, 25 | 29:17 74:15 | 134:25 | 364 77:6 |
| < 1 > | 14 3:13 4:7 | 84:12, 20 | 23 4:15 5:8 | 37 3:21 5:19 |
| | 70:4 72:7 | 87:15 125:19 | 136:9, 13 | 125:25 126:4 |
| | 74:19 116:15 | 2002 29:16 | 230 23:17 | 38 3:23 5:21 |
| | 144 6:4 | 2003 95:11 | 231 125:24 | 126:2, 5 |
| | 15 4:6, 9 | 97:7 102:16 | 24 4:18 5:1, 5 | 39 6:1 129:20, |
| | 31:20 75:7, 9 | | 9:13, 15, 16 | |
| | | | 17:17 46:14 | |

| | | | | |
|-----------------------|------------------------|------------------------|-----------------------|---------------------------|
| 23 | 18 | 917.591.5672 | 8, 10, 12 95:1, | Admission |
| < 4 > | 650 33:5 | 1:23 | 22 96:5, 11, 20 | 144:14 |
| 4 3:13, 24 5:8 | 667 144:20 | 95 5:1 137:2, | 97:6, 11, 14, 15, | Admissions |
| 22:18, 20 | 67 4:6, 7 78:1 | 8, 12 138:4, 21 | 18, 20 100:5 | 6:4 91:24 |
| 52:18 78:10 | 90:23 | 98 103:4 | 106:8, 12 | admit 78:17 |
| 40 3:24 6:3 | 68 91:5 | 9820 4:4 | 111:23 112:6 | 144:21 |
| 27:18 144:15, | < 7 > | 9th 117:24 | 122:22 | admitted |
| 18 | 7 3:4, 21, 24 | 118:5 | accepting | 90:11 91:3 |
| 400 1:19 | 4:3, 7, 7 5:8, | < A > | 113:25 | 144:23 |
| 41 2:4 6:4 | 14, 14 22:24 | A.J 2:3 | Accompanying | advertisements |
| 44.4 144:10 | 37:6 78:11, 12, | a.m 1:20 | 4:5 | 87:24 132:8 |
| 445 126:1, 8 | 24 79:9, 10 | 62:23, 24 | account 92:1 | advertising |
| 45 23:15, 22 | 121:25 133:25 | 89:16 | 124:8 | 24:1 |
| 24:2, 12 25:9, | 134:7, 15 | AAA 117:22 | accountant | advised 74:1 |
| 17 26:8 | 70 4:9 84:10 | 118:15, 23, 24 | 132:22 133:4 | affiliated |
| 134:22 140:24 | 75 4:11 | 119:5, 8 120:7, | 144:1 | 116:16 |
| 141:4 | 7th 40:13 | 25 121:5 | accountants | Affirmative |
| 457 1:18 | 41:24 | able 17:5 | 129:25 | 4:20 |
| 48 6:4 23:15 | < 8 > | 90:10 127:5 | accurate 8:1 | afford 117:20 |
| < 5 > | 8 3:10, 13, 21, | above-captioned | 17:7 28:5 | afraid 99:18 |
| 5 3:16 30:15 | 21 4:1, 1, 7, 7 | d 1:14 | 44:4 57:25 | AFSPM 34:18 |
| 60:10 95:19 | 18:4, 5, 5, 6 | Abrams 19:23 | 91:25 93:8 | 35:1 |
| 5,944,445 5:23 | 24:24 30:24 | 20:25 | 132:16 146:6 | agencies 43:3 |
| 50 11:23 | 35:10, 21 | absolutely | accurately | 49:19 60:13 |
| 18:13, 16, 16, | 38:17 43:22 | 14:10 49:14 | 14:24 78:6, 14 | agency 112:17 |
| 18, 18, 18 | 52:19 79:8, 9 | 54:6 58:15 | ACKNOWLEDGMENT | agency's 42:12, 13 |
| 23:10 24:16 | 80 4:13 | abstract 126:1 | 148:1 | ago 41:1 |
| 28:6 31:16 | 83 4:14 | abused 20:9 | acquainted | 53:24 60:25 |
| 54:8, 8 | 85 137:23 | AC364 75:23 | 70:16 | 61:21 69:16 |
| 510 130:16 | 853-0055 2:5 | 76:2, 6, 11, 12 | acronym 13:5 | 83:24 106:18 |
| 520 130:17 | 856 2:5 | accept 48:6 | act 101:1 | 107:18 123:4 |
| 53 14:22 15:6 | 864-7000 2:10 | 94:22 96:12 | Action 1:3 | agree 106:16 |
| 54 14:23 | 877.370.3377 | 98:22 99:7 | 12:12, 15 | 107:4, 17 |
| 59 4:1 | 1:23 | 113:25 114:14 | 59:24 60:5 | 112:20 113:15 |
| < 6 > | 88 10:8 | 115:8 | 62:3 81:1 | 116:12 117:6, |
| 6 3:10, 13, 18 | 89 4:21 | acceptability | 146:12, 15 | 9, 15 141:13 |
| 4:6, 7 5:3, 8 | < 9 > | 103:15 | active 21:5 | 142:9 |
| 18:1 22:23 | 9 3:21, 24 | acceptable | 27:4 103:4 | agreed 97:14 |
| 32:20 70:1 | 40:18, 23 | 45:22 | activity 79:15 | agreeing 34:24 |
| 72:5 77:23 | 45:20 47:19 | acceptance | actual 14:18 | Agreement |
| 6,287,050 5:17 | 52:19 53:7 | 76:8, 16 77:6, | 73:5 | 56:25 120:23 |
| 6,485,231 5:21 | 142:18 | 11 89:22 92:5 | additional | 121:14 |
| 6,692,187 5:19 | 9:33 1:20 | 94:6 95:6, 14 | 10:19 37:22 | agrees 136:20 |
| 60 90:1, 4 | 90 4:22 34:1 | 98:12 99:14 | 38:5 136:25 | ahead 106:24 |
| 60.1 144:10 | 137:2, 8, 12, 23 | 100:10, 24 | address 43:18 | 122:17 |
| 63 78:1 | 138:4, 20 | 107:13 109:1, | 45:10 80:8 | air 18:12, 14, |
| 65 4:4 90:2, | 91 4:23 | 7 114:6 116:7 | 85:9 | 19 23:10 |
| | | accepted 91:6, | addressees | 24:16 25:22, |
| | | 7, 14, 19, 23 | 123:24 | 24 26:1 35:15 |
| | | 93:21 94:6, 7, | addresses 80:2 | 54:9, 10 59:21 |
| | | | 110:5 | |

| | | | | |
|---|---|--|--|---|
| 98:24 121:19 123:12, 21, 25 124:9, 15 125:4 127:4, 9 131:8 Alabama 21:18 alive 85:24 allegation 90:11 allegations 14:24 78:2, 6 92:8 alleged 89:22 alleging 56:7 allow 121:12 allowed 15:22 allows 82:9 83:3 alter 80:20 122:13 altered 56:17 80:24 99:1, 11 aluminum 53:18 amazing 102:6 AMCA 9:18 16:15, 20 Amended 4:20 89:25 95:25 American 59:25 110:8, 10 americanfloodv ent.com 59:6, 13 ammunitions 12:16 amount 24:22 analyzed 26:16 analyzes 44:9 Anderson 10:7, 15 13:21, 22 21:5, 12 82:6, 12, 13, 17, 20 85:16, 20 86:11, 12, 14 111:6 angle 73:8 Answer 4:20, 22 7:17, 18, 19, | 21 8:1 15:5 16:1 22:13 24:13 25:11, 15, 20 26:20 29:3 33:15, 16 36:19 37:13 42:19, 20 53:7 56:1 63:19 64:9 78:11, 12, 14 89:25 90:8 92:8 96:22, 23 98:2, 15 106:24 112:15 115:18 132:3 Answers 3:13, 16 22:16, 23 30:12 31:4 35:9 52:19, 25 148:5 ANTHONY 2:3 anybody 101:15 124:8 apparently 87:14 113:13 appears 72:10 108:9 application 103:16 appropriateness 103:15 approval 71:2 approve 112:15, 17 113:25 approved 97:17 139:13, 20 approving 112:14 113:24 approximately 39:9 137:2 architect 46:24 architects 34:4 Architectural 51:12 area 14:8 15:1, 13, 19, 21 16:2, 7, 8, 11, 12, 16, 17, 19, | 21, 22 17:12 21:18 22:16 25:25 26:2 27:24, 25 31:15, 15 40:7 53:21 58:2 80:22 134:22 140:14 argue 68:18 arm 12:25 arming 12:16 article 111:17 ASCE 9:13, 13, 15, 16 17:17 46:14, 15 50:12 ASFPM 32:11 34:17 111:17 aside 32:24 121:3 asked 16:4 30:2 34:17, 18 48:9 56:23 68:5 81:15 94:25 99:3 102:19 106:6, 14, 25 107:21 112:22 113:23 115:16 asking 23:6 26:17 49:3 50:1 115:6 122:19, 21 123:24 asks 144:21 assembly 13:17 assess 133:15 assigned 78:18 assist 50:6 assistance 29:18 54:5 Association 25:25 35:2 69:5, 6 assume 37:10 78:22 assuming 82:11 assurances | 46:16 assure 37:20 ATI 51:21 52:5, 9, 10, 16 attach 45:3 attached 4:3 82:2 104:21 105:1, 13, 17 106:20 107:20 108:10 148:8 attaches 108:4 attachment 5:15 104:23 122:6 attachments 4:9 111:15 attend 36:14 126:14 attention 14:22 22:22 30:17 52:17 59:5 60:10, 17 61:3, 22 77:24 78:1, 11 84:10 90:1 95:20 114:11 117:3 144:15 attorney 7:6 66:17 68:25 146:11, 13 attorneys 20:7 113:2 128:4, 5 133:13 attorney's 115:17 August 70:1 72:5 102:16 authority 103:13 104:1 122:21 AutoCAD 27:20, 23 28:19 automatic 76:17 automatically 58:20, 22, 23 available 15:3 136:10, 14 average | 142:18, 25 avoid 121:15 aware 23:7 24:3, 4 35:23, 25 41:5 42:1, 22 43:7 44:13 54:22 60:14 64:12, 16, 20 67:4, 6 70:24 71:19 75:17 84:23 92:20, 23 95:23 116:21 128:16 131:13, 16 144:24 awareness 39:14 Awesome 145:9 < B > B1 5:17 B2 5:19, 21 Bachelor's 11:24 back 16:15 17:17 22:15 29:14, 17 30:9 48:7 51:6 52:17 71:8 77:24 84:7 89:8, 9 96:17 98:9 101:2, 20 104:21, 23 105:16 109:20 111:12 130:25 133:8 145:11 background 10:21 11:8, 20 balance 10:7 balances 44:6 based 25:9 47:25 121:4 135:3, 11 basically 27:19 basis 28:15 97:5 106:7, 10 107:12 Bates 40:21 70:8 |
|---|---|--|--|---|

| | | | | |
|--------------------------------------|---|---------------------------------------|---|--|
| Beach 80:10 85:6 | boards 66:21 116:25 | 18:13, 21 21:5 27:3 29:14 | Carolina 32:3, 5, 9, 10, 10, 23 | certification 24:1, 11 29:19 |
| beat 100:13 | bold 90:12 | 32:22, 25 | 33:6 65:21 | 46:22 52:11, |
| began 64:12, 16, 19 | Bolton 5:15 123:11, 21 | 33:10 34:3 | 86:11, 13, 15 | 12 56:17 57:6 |
| beginning 11:2 | bottom 30:24 | 51:21 52:10 | carries 138:9 | 58:11, 16 61:6 |
| behalf 19:2 64:13, 17 | 35:12, 13 | 59:17 60:16 | Carter 41:14 | 66:11 74:14 |
| 66:18 68:18 | 44:17 70:9 | 61:4 72:20 | Carter's 45:3 | 77:5 80:20, 21, |
| 100:11 101:13, 16 108:20 | 73:12 96:14 | 79:18, 19 84:4 | case 14:11, 15 | 24 93:11, 16 |
| 109:1 | 98:19 113:3 | 85:13, 15 86:5 | 20:8, 10 50:24 | 100:7 114:23 |
| belief 48:19 | brand 81:5 104:5 | 94:16 98:4 | 53:3 55:21 | 115:1, 20 |
| 83:10 97:19 | break 62:21 129:16 | 110:9 124:13 | 64:12, 16, 19 | 127:22 |
| 136:24 | Brian 81:23 130:10 | 138:8, 13 | 65:11 67:8, 12 | certifications 24:23 47:25 |
| believe 15:4, 10 25:5 46:2 | bridge 35:5 | 141:17 | 68:2 69:25 | 52:6 56:9 |
| 49:11, 14 | brief 10:13 62:23 129:17 | businesses 11:11, 11 | 74:24 77:21 | 67:2 71:1, 12 |
| 80:13 99:2 | bring 39:14 | buy 26:3 | 79:2, 13 81:18 | 72:12, 24 93:2 |
| 139:12 140:23 | broke 124:11 | 33:18 | 99:2 103:17, | 116:19 117:1 |
| believed 53:21 | brought 28:17 84:6 | buyer 13:7 | 24 117:22, 24, | 141:2 |
| 118:17 120:8 | Bruce 27:17 | < C > | 25 118:8, 13 | Certified 1:16 |
| best 16:1 22:12 58:3 | buckled 44:13 | cahoots 124:18, 19 | 120:5 121:23 | 48:11 51:16 |
| 66:24 68:11 | Bucks 11:22 12:3 | calculated 140:14, 15 | 124:18 125:7, | 66:15 81:7 |
| 78:5 92:16 | build 32:12 46:24 | calculating 130:2 | 12 126:10 | 90:5 91:2, 23 |
| 131:4 132:17 | builder 143:11 | calculation 40:6 | 127:7 128:2, | 92:19, 23 |
| 136:4 | builders 34:4 | caliper 26:17 | 21, 23 130:3 | 93:10, 11, 14 |
| better 22:13 | building 10:25 13:17 29:16, | call 37:21 | 133:16, 20 | 96:19 97:21 |
| Beware 41:6, 22 | 19 35:5 36:23 | 54:4 77:20 | 134:1, 4, 5, 7 | 101:3 103:7 |
| Beware, 41:24 | 41:19 51:18 | 101:12 131:1 | 139:1 | 104:7 124:22 |
| Bietel 27:17 | 62:9, 10 70:22, | 133:22 | cat 45:6 | 127:20 134:8 |
| B-i-e-t-e-l 27:18 | 23 94:17, 17 | called 1:13 | categorized 17:24 | 146:3, 4, 4 |
| big 144:6 | 99:15, 23, 25 | 30:19 32:3 | Category 31:20 57:14 | certify 50:13 |
| Bill 29:4, 7 80:8 | 100:1, 15 | 52:20 53:16 | 58:6 142:19 | 94:18 146:5, |
| Billy 55:1, 2 | 101:11 103:13, | 56:12 66:9 | caution 120:10 | 10 148:3 |
| Biloxi 104:17 | 25 115:13 | 83:17 101:16 | cautioning 98:12 116:6 | cetera 53:11 |
| bit 17:1 21:24 40:9 | buildings 90:7 | 121:18 | cc'd 110:25 | 87:2 |
| 89:10 | built 10:20, 22 | calls 98:25 | cease 66:25 | CFF 6:1 |
| blades 73:7, 7, 8 | bulk 33:19, 22 34:19 143:1, 2 | capital 87:10 | 81:12 | CFO 21:13 |
| blatant 83:6 | bulk, 33:24 | capitalized 87:1, 4 | Cecil 62:20 | challenge 97:1 |
| blog 66:5 | Bulletin 9:13 46:13 | cardboard 131:6, 9, 18, 20, | certain 47:16, 20 | change 76:16 |
| blueprint 13:22 | business 10:18, 20, 22 11:2, 7, | 24 132:5, 6 | certainly 48:14 89:7 | 93:1, 4 115:14 |
| Board 21:9 | 14, 21 13:18 | career 11:10 | 94:10 139:25 | 116:8 147:4 |
| | | carefully 44:2, 3, 8 45:15 | Certificate 38:13 39:11, | changed 40:5, 7 98:7 103:22 |
| | | Carl 110:21 124:6 | 16, 24 | changeover 114:25 |
| | | | certificates 24:8 40:5 | changes 68:19, 19 148:7 |
| | | | 45:21 46:6 | chapters 35:3 |
| | | | 65:18, 21 | characterize 91:19 |
| | | | | charge 13:9, 17 |

| | | | | |
|--|---|--|--|---|
| Charlottesville 75:12 cheating 53:20 checks 44:6 Cherry 1:19 Chris 70:16, 18, 20, 21 claim 45:21 78:7, 15 79:13 84:11 85:3 106:7 111:22 claiming 81:6 claims 126:17, 23 clarification 16:5, 5 26:19 48:9 96:4 clarified 63:21 clarifies 46:13, 15 47:17 63:17 clarify 15:23 16:6 17:4 67:18 classes 11:21, 22 clear 15:6 17:11, 22 18:1, 7 47:23 48:8, 10 94:20 97:16 102:4 119:24 127:5 132:2 cleared 42:5 clearer 48:8 client 41:1 Cliff 94:21 96:11 97:12 108:21 111:3 115:11 Clifford 48:1 106:13 clog 141:9 closer 57:16 CLR 146:18 Coast 21:20 co-chair 69:5 code 29:16, 19 35:5 68:19, 22 70:22, 23 94:17 99:15, | 24, 24, 25 100:1, 5, 15 115:13 codes 10:25 101:11 coefficient 17:15, 20 18:1, 5 57:23, 24, 25 C-o-l-b-o-u-r-n 29:7 COLE 2:8 7:8 coles@whitean dwilliams.com 2:11 collaborate 32:12 collaborating 124:20 collaboration 34:16, 22 collaborative 32:2 colleague 7:8 come 27:5 40:7 92:16 118:16 138:4 comes 11:12, 12 27:18 coming 40:20 73:13 commencing 1:20 comment 76:18 117:10 122:13 commenting 72:12 comments 62:3 commercial 66:6 commission 148:12 committee 32:11 111:18 communicate 40:8 Communication s 41:16 116:15 companies 12:11, 14 | 23:10 59:10 96:19 119:1 135:4 company 8:12 10:11, 14 13:16, 17 15:16 18:9 19:6, 9, 10 20:17 21:15 23:4, 7 28:11, 15, 20 29:10 32:3, 7 36:2 38:8 41:5 42:25 44:19 51:13, 15, 16, 19 52:20 55:8 59:24 60:3, 5 63:6 68:7 70:8, 10 74:16, 18 76:18 77:20 80:11 81:21, 24 82:4 83:24, 25 84:7 85:8 86:4 87:3 92:20, 23 110:9 121:18, 20 125:15 128:16 130:8, 11 132:19, 20, 23 133:15, 17 145:8 company's 68:8 112:16 113:13 118:16 compare 71:25 72:3 competed 110:19 competing 119:17 competition 19:5 119:12 competitor 23:12 54:10 110:10 111:11 135:14, 20 competitors 79:21 81:17 97:20 110:17 129:6, 13 | 135:2 136:2, 5, 25 138:14 Complaint 3:13 14:14, 19 55:19, 20 77:25 84:9 complex 126:25 compliance 56:10 63:21 68:20 compliant 90:20 91:19 104:7 134:8 comply 31:9 45:12 59:22 63:12, 25 64:5 77:2, 3 component 16:12 components 12:22 concentrate 25:15 concerning 53:9 60:13 133:11 concerns 105:2 conclude 141:3 concluded 145:13 conclusion 25:9 conclusions 144:8 concur 144:11 conduct 51:17 132:6 conducted 27:1, 2 60:12 conference 104:10, 17 confident 138:10 confidential 20:5, 7, 19 120:11, 16, 17, 21, 23 128:4, 25 confidentiality 121:10 | confirm 27:22 30:2 46:6 84:17 90:10 confirmation 49:19, 23 confirmed 30:4 confuse 81:6 confused 26:23 congruent 101:10 consider 45:16 58:13 131:9, 20 considered 54:12 83:8 consistent 144:4 consisting 132:13 construction 46:8 126:17 consultant 69:12 70:21 74:1, 6, 8 consulting 27:6 28:13, 14, 20 29:10 75:12 80:9, 11 consumers 44:10 81:6 contact 53:15 63:2 contacted 53:8 54:22 contention 14:7, 11 15:11 31:8 45:11 contentions 14:25 context 102:22 105:14 conversation 53:23 54:1 conversations 107:6 convoluted 122:23 Cooke 80:17, 18, 19, 23 81:1 82:17, 21 |
|--|---|--|--|---|

| | | | | |
|--|---|--|---|---|
| 135:2, 19 136:6 139:25 C-o-o-k-e 80:17 coordinator 32:9 82:8, 21, 25 83:2 copies 34:12 126:2 copy 14:14, 18 89:24 90:8 102:15 125:25 core 97:10 corner 70:9 86:22, 24 corporate 7:9, 11 10:13 85:9 corporation 86:2 87:2 correct 12:2 14:4, 8, 9, 11, 12 15:13 21:17 22:7 23:2 24:25 25:5, 6 29:23 33:13 34:6, 7 36:11, 12, 21 37:17 42:25 43:8, 18 45:13, 14, 25 47:20 49:1, 14, 16, 17 50:3, 9 51:1 53:24 56:7, 21, 22 58:11, 12 61:23 64:23 71:24 75:14 77:16 80:11 84:24 93:12, 18, 19, 25 96:6 99:8 104:2 109:8 112:2 115:9, 10 120:5 121:1, 19 123:5, 15 124:1, 2, 15, 23 125:13 133:2 135:14, 15, 18, 21, 23 138:18 139:21, 22 140:2, 11, 25 141:5, 16 | 142:24 143:8, 11 144:2 148:5 corrections 148:7 correctly 30:1 94:11 134:21 140:14, 15 correspondence 109:2, 13 Costs 5:11 Coulbourne 29:4, 24 80:9, 9 Council 68:19 Counsel 2:6, 12 9:11 106:25 107:3 128:3 146:12, 14 counterclaim 92:8 Counterclaims 4:21, 22 89:25 90:8 country 18:20 County 11:23 12:3 course 37:17 61:21 66:8 100:13 140:8 COURT 1:1 20:13 49:4 50:2 71:8 121:12 cover 7:23 15:21 23:22, 23 24:12 57:7 131:6 140:18 141:6 coverage 16:8, 13, 14 17:14 57:16, 21 140:15 141:4 142:1 covered 24:24 53:21 covers 24:16 53:20 80:22 89:3 | CPA 6:1 133:6 Craw 3:7, 10 CRAWL 1:6, 6 2:12, 12 3:9, 12 4:5, 18, 20 7:7 14:7, 25 15:12, 18 16:7, 8, 25 18:10, 11, 16 22:24 23:5, 7 24:11, 22 26:6 28:1, 3, 9, 23 29:21, 25 31:8 35:10, 11, 14 40:5, 13 41:6, 22 43:23 44:15 45:11 50:13 51:1 53:9, 17, 19 54:22 56:18 59:6 60:13, 17 61:3, 5, 11, 18, 23, 24 64:13, 17 65:3 66:25 71:11 75:17, 20 77:15 78:18 79:1, 24 80:14 81:19 87:22 88:5, 11 89:25 106:6 116:16 119:21 127:23 129:7 131:3, 13, 16 132:9 134:16 135:22 136:6 139:20 140:23 141:1, 17 142:8, 15 credit 101:22 credits 11:23 criteria 76:8, 16 77:6, 11 99:14, 16 critical 12:22 13:14 CRR 146:18 Cruz 62:19 CSD00009817 4:4 CSR 146:19 | current 83:25 100:15 113:14 customers 41:17 cut 113:7 cybersquatting 56:4 < D > Damage 5:10 44:14 damages 130:2 133:16 144:16 Dana 6:1 Data 4:3 32:15 44:4 101:9 133:11 136:10, 15, 20 DATABASE 5:23 date 4:17 6:6 47:7, 9 105:6 109:9, 9, 10, 10 146:8 148:12 dated 3:21, 24 4:1, 1, 3, 6, 7, 9, 12 5:1, 3, 3, 5, 8, 11, 14 30:20 70:1 121:25 129:24 dates 72:5, 8 109:6 115:21 David 110:23 124:6 day 19:4 52:16 118:21 148:12 days 84:6 88:22 101:20 130:25 dealer 143:4, 10, 13 dealers 33:1, 4, 7, 23 34:1 138:8, 9 142:24 143:2 death 100:13 DECAS 12:21, 24, 25 | D-E-C-A-S 13:5 December 75:16 decided 80:20 defend 20:10 Defendant 1:8 Defendants 2:12 Defendant's 3:16, 18 4:22 6:3 30:13 Defenses 4:21 definitive 49:4 50:2 degree 11:19, 24 12:1 degreed 11:17 Delaware 80:10 82:8, 21 83:2 86:2 delay 66:1 Della 62:19 demands 26:1 denials 91:24 denied 90:21 depicting 43:23 DEPONENT 148:1 deposed 116:18 deposition 1:12, 14 3:7, 10, 13 4:17 6:6 7:9, 14 8:4, 8, 19, 22 9:3 14:17 20:11 22:20 30:15 32:20 37:6 38:17 40:18 53:3, 5 59:3 62:24 65:6 67:14 70:4 75:9 80:5 83:19 89:19 90:14 91:11 95:8 102:11 104:14 105:8 108:13 110:1 114:9 |
|--|---|--|---|---|

| | | | | |
|---|--|--|--|--|
| 116:3 122:2 125:22 126:4 129:18, 20 144:18 145:13 deps@golkow.com 1:24 describe 91:21 design 10:20 47:2 78:18 designate 20:19 designated 8:11 14:5 31:19 45:9, 10 79:5, 7 92:7 119:15 128:3 designations 20:9, 14 designed 43:3, 12 45:23 46:24 desist 67:1 81:12 Despite 35:22 detail 54:2 detailed 82:20 details 11:13 determination 103:14 104:2 determine 31:15 116:9 determined 15:7, 8, 12, 18 develop 10:18 developed 99:14 development 119:22 developments 133:20 device 120:1 devices 12:17 DHS-FEMA 5:3 difference 53:18 58:10 differences 130:15 different 7:24 18:20 59:10 | 72:18 120:24 138:9 difficult 20:10 76:25 DiMARINO 2:3, 3 14:18 15:2 16:3 20:4, 15 26:19 29:2 31:18, 24 33:14, 17 36:4, 16, 20 37:11, 17 38:22 40:19, 24 44:23 48:14 49:6, 21 50:4, 15, 20 51:9 55:15, 22 61:14 63:18 64:7 65:23 69:13 71:6 72:15, 25 73:16, 20 74:4 76:10 77:3, 7 78:20 79:4, 8 83:15, 16 89:7, 11, 13 92:4 93:22 96:21, 24 98:1, 14 99:3 100:18, 22 101:18 102:1 103:19 105:3, 24 106:23 107:2, 5, 25 108:3, 22 109:16 111:25 112:7, 21 113:9, 16, 22 114:1 116:11 117:7, 12, 17 118:1, 3 120:10, 22 121:1, 9 122:10, 16 123:6, 14 124:24 126:9 128:1 133:9, 17 134:3 137:17 139:2, 9, 14 141:19 142:2, 10 | direct 14:22 22:22 30:17 52:17 60:10 77:24 78:1, 11 90:1 106:5 114:11 117:3 144:15 directing 84:9 95:20 direction 82:5 directions 115:18 directly 33:19 69:12 Directors 21:9 discharge 17:15, 21 18:1, 2, 5 57:23, 24, 25 disclaimed 84:24 discover 79:1 discovered 79:17 discovery 64:22 65:11 discuss 20:18 31:19 92:8 107:2 130:24 discussed 29:3 71:11 96:1 97:14 129:8, 11 discussing 62:16 67:23 Discussion 70:14 123:8 135:3 discussions 138:1 disseminated 72:18 disseminates 35:7 distance 73:6 distinguish 118:24 distribute 34:11 distributed 34:9, 12 44:7 | distributing 98:11 DISTRICT 1:1, 2 docket 125:7, 11 Document 8:3, 9, 13, 19, 21, 25 11:6 14:16 22:19 25:8, 13, 17 26:3 30:14, 21 32:12, 19 35:23 37:2, 5 38:16 40:17 41:3 47:17 59:2 65:5, 8 67:6, 17, 22 68:4 69:24 70:3, 11 71:22 73:20, 21 75:8 78:4 80:4 83:18, 21 89:18 90:13 91:10 95:7 98:20 102:10 104:13 108:12 109:25 111:21 112:4, 9 114:8 116:2 122:1, 6 125:21 129:19 144:17 documentation 10:23 52:15 documents 9:2, 7 17:22 21:25 25:2, 23 30:8 37:23 39:15, 19 40:2, 21 44:3 49:23 64:22, 25 67:13 69:19 72:19 102:25 111:16 112:9 115:22 126:3 doing 54:23 56:14, 18 69:4 79:21 109:20 116:21 132:1 145:8 dollar 138:5 | dollars 47:24 48:10 domain 56:3 doner@dimarinolaw.com 2:5 DOOR 1:6, 6 2:12, 12 3:7, 9, 10, 12 4:18, 20 7:7 16:8, 8, 25 22:24 28:1, 3, 24 29:25 35:10, 12, 14 44:15 75:20 87:23 88:11 127:13 135:22 142:15 Doors 15:12 18:10, 11, 16 23:5, 7 24:11, 22 26:7 28:9 29:22 40:6, 13 41:6 50:13 51:1 53:17, 19 54:23 56:18 59:6 60:17 61:3, 5, 11, 23, 24 64:13, 17 65:3 66:25 71:11 75:17 77:15 78:19 80:14 81:19 88:5 119:21 127:23 129:8 131:3, 13, 16 132:9 134:16 136:6 139:20 140:24 141:1, 17 142:8 Door's 43:23 Doors , 41:22 double 143:16, 16 Dr 75:18, 20, 22, 25 Draft 5:8 100:17, 19 108:9 109:18 drafted 55:19 drafting 108:20 |
|---|--|--|--|--|

| | | | | |
|---|---|---|--|---|
| draw 60:16 61:22 drawn 61:3 drew 27:23 59:5 driver 144:6 due 117:5 122:22 duly 7:1 duties 41:15 < E > earlier 23:2 43:22 60:21, 24 68:5 80:10 89:1 91:16 122:7, 14, 19 143:1 early 18:13 55:11 68:7 79:18 84:5 88:21 101:20 Ed 28:16, 18 educational 11:20 43:13 Edward 111:1 effect 76:25 126:22 effort 32:2 eight 28:22 EisnerAmper 129:25 130:2 132:12 either 42:13 87:23 103:1 128:3 elaborate 44:5 element 17:13, 20 elements 15:20 27:5 45:4 Elray 12:12 13:15, 16, 25 E-l-r-a-y 14:1 E-mail 3:24 4:3, 12 5:5, 8, 11 37:25 38:12, 19, 20, 23, 25 39:4 40:12 41:1, 6, | 22 43:17 45:19 46:8 47:19 58:24 65:1, 13 66:7, 8 69:25 75:5, 11, 16 77:17 80:1, 16 82:1, 20 95:3 96:15 97:12, 24 98:6, 10 104:21, 25 105:12, 16, 20 106:19, 20 107:19, 22 108:3, 8, 9, 15, 20 109:19, 22 110:3, 5 111:7, 13, 16 115:24 116:5 123:25 E-mails 3:21 4:1, 1, 9 5:1 9:11 42:4 51:4 62:17 63:8 72:1 74:21, 22 95:10 109:1 emotionally 48:24 employed 28:10, 14, 21, 23 29:10, 21 employee 19:24 20:24 22:11 70:20 133:2 146:11, 13 employees 19:3, 6 21:15, 16 26:15 39:7, 9 63:5 113:14 enclosed 15:21 encourage 63:2 encouraged 37:25 ended 77:12 engaged 129:7 engineer 11:16, 17 12:18, 20 27:15 28:17 29:11 48:12 52:7 66:9 | 68:23 80:11 82:13 127:22 engineered 25:22 36:10 38:13 39:11, 16, 23 45:21 48:2 57:6, 12, 14 58:4, 14, 15, 21 59:19 61:13 82:6, 23 99:16 118:22 119:14 127:16, 19 134:18 135:2, 5 136:16 137:3 138:22 139:13 140:8, 10 engineering 11:18, 21 24:8 46:6, 20 48:21 49:15 63:22 65:18 66:21 68:1 71:12 116:25 141:2 engineers 24:23 27:6, 7, 10, 16 28:10, 13, 14, 20 50:13 52:5 66:15, 21 116:15, 17 engineer's 67:1 71:1 ensued 128:20 entire 37:20 93:9 entitled 96:20 entitlement 111:22 entity 120:24 entries 125:7, 11 entry 136:25 Errata 148:8 error 144:21 escapes 52:8 especially 27:4 Esq 5:15 ESQUIRE 2:3, 8, 8 | estimate 30:7 33:25 47:10 143:18 estimated 135:12 137:22 estimation 138:12 et 53:11 87:2 evaluated 48:4 114:14, 20 115:8 evaluation 42:14 43:4 48:4, 6 52:3 57:4 58:5, 19, 22 73:13 76:9 94:23, 24 96:13 99:18 100:1, 3, 3 103:10, 12 111:4 evaluations 51:17 event 60:25 61:19, 19 139:1 events 77:1 Eventually 55:10 everybody 24:14 everybody's 24:20 evidence 24:22 evidenced 48:3 evidently 111:12 exact 39:20 47:7 exactly 19:8 23:16 32:4 37:10 47:5 56:18 57:22 60:22, 24 65:25 98:6 114:18 128:22, 22 exaggerated 142:1 Examination | 1:13 examined 7:2 example 30:24 35:19 83:5 88:4 examples 87:14 exception 29:2 excerpt 4:7 43:21 excerpts 67:25 excess 144:22 145:2 exchange 65:1, 13 exchanged 72:1 excited 105:11, 17 excused 89:14, 16 145:12 Exhibit 8:4, 18, 22 14:14, 17 15:3, 11 22:18, 20 30:15 32:20 37:6 38:15, 17 40:15, 18, 23 43:17 52:18 59:1, 3 65:6 67:14 70:2, 4 75:7, 9 77:23, 25 78:9 80:5 83:19 84:9, 16 89:19, 24 90:9, 14 91:11 95:8, 19 98:9 102:11 104:14 106:20 108:11, 13 109:23 110:1 114:7, 9 115:25 116:3 122:2 125:19, 22, 24, 25 126:2, 4 129:20, 23 144:15, 18 EXHIBITS 3:7 4:15 6:4 14:15, 20 |
|---|---|---|--|---|

| | | | | |
|--|--|--|---|---|
| 67:10, 16 existed 23:6 expensive 24:18 142:11 experience 14:2 27:19 63:1 experienced 68:6 Expert 6:1 50:23 67:7, 11, 17 68:1, 3, 22 129:24 133:25 135:1 136:9 142:14 144:1 experts 133:18 expires: 148:12 explain 98:22 130:14 explanation 122:23 expressed 48:24 extensively 49:13 extent 133:9 138:21 extraordinarily 138:25 extraordinary 139:5 extremely 27:4 eye 23:13 eyes 20:7 128:4, 5 133:13 < F > fabricated 13:20 Fabricators 86:20 face 25:24 26:5, 6 28:8 facility 52:13 fact 31:3 35:22 49:12 55:21 72:24 91:18 101:8, 17 114:19 | 116:8 132:5 139:8 factual 97:4 106:7, 10 107:12 fairness 35:7 false 142:1 familiar 8:9, 24 30:21 31:10 42:9 45:17 46:2 51:13 52:22, 24 59:13 60:3 63:14 75:19, 25 76:11 83:21 117:25 121:18 familiarize 68:8 far 17:1 29:17 34:14 68:1 87:7 faster 17:19 18:7 fax 1:23 February 108:16 109:6 Fed.R.Civ.P.30 3:10, 13 federal 60:12 84:11 feet 24:24 140:19, 20, 24 141:4, 6 fellow 22:5 felt 57:6 FEMA 5:1 35:5 44:17 46:5, 17 47:13 49:19, 23 61:10 62:3, 8, 19 63:1, 3, 6 64:14, 18 65:14, 17, 22 66:24 68:12, 14, 16, 21 69:20 70:20, 22 71:2, 20 74:13, 22 76:23 81:7 82:14 83:5, 8 | 90:6, 20 91:6, 7, 14, 18, 19, 23 92:5 93:21 94:6, 6, 8, 8, 9, 12, 14, 22 95:1, 6 96:4, 10, 12, 20 97:6, 20 98:11, 22, 25 99:7, 14 100:10, 17, 20, 24 101:3, 12, 16 102:4 106:8, 11, 13 107:12 108:21 109:1, 7, 19 111:1, 23 112:5, 14, 15, 16, 17 114:6, 13 115:7 122:22 124:22 134:8 139:12, 20 141:16 FEMA , 95:22 FEMA-accepte d 91:2 FEMA's 44:19 60:17 61:3 68:18 89:21 103:23 fervent 48:19 field 11:7 19:21, 25 24:14 30:25 31:15 38:2 39:6, 15 69:7, 9 figure 16:12 17:13 79:15 106:1 figures 138:5 144:11 file 83:12, 15, 17 113:6, 13 filed 10:19 55:21 77:14 92:16 105:21 117:22, 24 118:4 119:19 125:8 filled 131:11 Films 44:25 | final 103:14 104:1 144:16 finalized 10:19 finally 95:16 financial 132:23 133:5, 11 financially 146:14 find 28:3 38:10 47:8 102:20, 21, 21, 25 107:12 122:14 136:10 finding 106:19 fine 89:11 133:14 fingertips 112:12 finish 7:17 firm 121:25 133:7 First 3:16 5:8 6:3 7:25 12:15 14:6 17:11 18:10 20:15 22:17 23:4 26:17 27:9, 22 29:14 51:24, 25 52:17 53:15 66:7 68:4 78:10 89:3 99:8, 13 111:2 118:23 119:16 123:15, 17 124:16 five 28:21 53:24 62:22 69:17 125:17 136:5 140:20 flap 58:13 91:20 92:15, 19 93:13 Flaps 58:8, 11, 21 94:9 96:1, 7 134:1, 8 136:7, 8 137:11, 16 140:4, 9 flip 35:16 | Flood 4:5 5:10, 10 10:16, 24 14:3, 8 16:24 18:15, 20 26:7 31:8 32:3, 5, 23 33:6 42:12, 13, 14 43:4, 6 44:12 45:11 54:16, 18 55:9, 13 56:2, 10 57:1, 3, 3, 9, 9, 12, 13, 15, 17, 17, 21 58:4, 4, 8, 10, 13, 21, 21, 22 59:25 60:13 61:5 72:19 76:17 77:15 89:22 90:19, 20, 25 91:2, 20, 20 92:15, 15, 19, 22 93:13, 17 94:9, 15 95:22 96:1, 2, 6, 7 97:5 98:23, 24 100:6 106:11 110:8, 10 112:19 119:10, 11 123:12, 21, 25 124:9, 14 125:4 126:10 127:4, 9, 13, 14, 14 128:3 129:3, 10 130:12, 17, 20, 22 131:2, 3 132:14 134:1, 8, 9, 11, 18, 19 135:1, 3, 6, 13, 24 136:5, 6, 7, 8, 13, 16, 21 137:3, 11, 16 138:17, 17, 22 139:13 140:2, 4, 8, 9, 9 Floodplain 35:2 69:6 90:7 Floods 139:23 |
|--|--|--|---|---|

| | | | | |
|---|--|--|--|--|
| Floodvent.com 43:11, 17 Floodvents@gmail.com 110:15 124:7 floor 50:12 Florida 83:24 85:6, 10, 11 87:2 flow 17:18 26:1 flows 17:18 18:6 foam 131:11, 14 focused 13:7 folks 13:1, 9, 23 62:15 76:6 follow 115:17 followed 94:24 96:11, 13 follows 7:3 foot 16:14 footage 24:19 57:7, 21 football 46:25, 25 foregoing 146:6 148:4 form 50:4 77:7 83:25 96:21 98:1, 14 142:3 148:7 formal 32:25 56:25 94:23 formally 61:19 96:5 former 113:14 Forster 111:4 forth 15:11 23:8 26:17 34:4 68:9 72:13 89:8, 9 90:6 146:9 forward 20:5 40:19 80:7 found 17:3 22:23 28:7 30:25 38:1 81:16 108:4 | Foundation 5:10 10:16 14:3 76:17 90:25 140:20 foundations 44:11, 13 four 22:10 93:15 125:15 frame 73:6 freaking 21:23 free 16:22 17:12 25:24 31:15 frequency 98:25 front 17:23, 25 93:11 full 41:13 FULL-TEXT 5:21 full-time 19:20 fully 27:7 function 27:24 further 73:9 145:11 146:10 Furthermore 112:17 < G > gap 35:5 garage 130:18 Garrett 21:18 Gary 21:20, 22 22:1 gasket 131:12 gather 10:10 14:2 34:2 40:10 43:7 52:24 54:22 116:5 Gebhardt 21:19 general 18:10 42:24 43:13 61:25 117:10 generally 9:8 15:25 33:13 83:21 132:16 gentleman 22:2 George 12:6 | getting 20:16 22:15 83:16 100:25 116:18 give 7:17, 18, 19 10:13 19:14 30:7 33:24 37:19 39:13 47:10 130:19 given 69:19 71:19 133:10, 20 148:5 gives 18:1 43:17 108:19 130:16 giving 48:15 122:22 Gmail 124:8 go 12:5 17:17 20:11 40:19 51:6 81:9 89:8, 9 93:6 94:19 100:7 106:24 122:17 123:6 124:9 133:22 145:11 God 101:1 goes 42:15 44:5 45:5 136:19 going 7:8, 16, 24 23:19 27:8 30:8, 9, 9 31:21 34:1 47:1, 8, 11 51:3, 5 56:14 60:23 76:21 77:10 81:4 83:12 90:1, 7 94:2, 9 96:16 108:2, 2 115:14, 14 120:10, 13 127:1, 2, 7, 7 128:7 144:13 GOLKOW 1:23 Good 7:5 20:19 83:16 100:7, 12 Google 119:18 | government 49:19 63:12, 25 grade 13:13 graduate 12:7 GRAHAM 1:13 3:3 5:1, 5, 14 7:1, 5 8:24 37:11 48:14 51:7 53:10 63:1 65:8 66:9 70:6 89:21 92:6 95:10 101:2 103:11 105:24 107:9 112:21 114:15 116:14 123:10 129:22 133:10, 25 135:4 136:19 148:3, 12 grate 17:23 great 83:5 87:16 139:6 Greg 62:13 Greg's 62:13 grew 11:15 grill 17:23 gross 132:20 group 12:22 19:19 42:6 44:6 62:9, 10, 14 82:14 84:4, 5 115:13 grouping 142:15 Grove 2:4 grow 12:3 growing 19:9, 10, 11 grueling 48:11 guess 37:18 67:24 105:24, 25 guessing 23:20 106:2 guidance 46:5, 10 63:11 65:17 68:20 111:3 | Guide 3:18, 21 30:20 31:12, 14, 20 32:1, 17 34:8, 11, 11, 15, 19, 19 35:16 36:13 37:3 38:9 43:22 45:10 50:12 57:18 63:24 64:5 69:7 86:17 128:14 141:3 Guides 37:25 69:9 guys 111:11 < H > Haas 21:13 130:10 133:1 Haddonfield 1:18 2:4 hair 17:6 half 53:24 86:16 87:4 Hall 21:22 22:1 hand 7:19 8:17 14:13 22:16 30:11 37:2 38:12 64:25 67:10 69:24 83:12 89:23 90:8 102:7 108:8 109:22 handed 8:6 129:22 hang 7:25 happen 52:15 happened 38:3 96:16 happening 77:12 happy 20:17 101:23, 25 102:2, 5 133:19 hard 102:17 headquarters 111:2 |
|---|--|--|--|--|

| | | | | |
|--|---|---|--|---|
| hear 18:10 23:5 heard 20:16 75:24 91:16, 17 hearing 126:14, 16 hearings 126:17 height 73:5 held 10:10 126:15, 17 he'll 45:3 help 21:21 29:18 31:14 76:20 99:14 101:24 102:18 helped 101:7, 9 helping 13:21 95:15 109:18 112:18 hereinbefore 146:8 Hi 82:1 Hiegel 110:23 124:6 hierarchical 19:16 hierarchy 27:3 high 12:5, 6 138:25 139:5 higher 142:7 Hill 1:19 hired 50:25 51:1 68:12, 14 69:7 history 10:13 11:7 68:8 83:17 Hold 16:3 96:8 holder 85:23 Holme 22:5, 6, 8 home 47:1, 2 85:21 homeowner 140:14 143:11 homeowners 33:13, 18, 20 | 34:2 35:6 homes 90:6 honest 55:24 65:24 102:17 horizontal 73:8 hour 123:4 hours 48:10, 11 housing 138:11, 16 how's 73:13 human 49:9 hydrostatic 44:12 < I > ICBO 115:15 ICC 68:20 115:2 ICC-ES 48:5 51:16 52:3, 11 57:4 58:5, 11, 19, 22 73:13 76:9 77:5 91:2, 23 96:13, 15 103:7 114:15, 20, 23, 25 115:8, 14, 19 127:20 134:8 idea 19:14 43:25 100:25 110:24 134:13 143:13 identical 55:20 56:6 identification 8:3, 7, 21 14:16 22:19 30:12, 14 32:19 37:5 38:15, 16 40:17 58:25 59:2 65:4, 5 67:13 70:3 75:7, 8 80:4 83:18 89:18, 23 90:9, 13 91:9, 10 95:5, 7 102:8, 10 | 104:12, 13 108:10, 12 109:23, 25 114:7, 8 115:25 116:2 121:23 122:1 125:21 126:3 129:19, 23 144:13, 17 identified 80:10 identifies 135:1 identify 40:14 95:21 136:14, 17 ignored 141:1 illegal 98:24 99:12 IMAGE 5:21 imitated 88:6 implies 101:23 imply 73:1, 17 101:5 important 16:16 98:21 105:15 107:11 impossible 20:10 77:1 impractical 141:13 impression 108:19 improperly 56:2 improvement 138:17 inaccurate 57:6 Inc. 118:24 Inc.'s 3:9, 12 4:20 inch 16:14 17:7 inches 17:14 23:15, 15, 17, 17, 23, 24 24:2, 6, 12 25:9, 17 26:8 134:22 include 37:22 | included 30:24 38:6 77:10 111:15 includes 97:6 106:12 107:21, 24 including 101:12 112:19 incorrect 17:12 57:8 93:20 incremental 144:9 independent 19:20 22:6 124:16 136:14 indicates 111:14 Indicating 45:2 individual 29:3 45:24 Industries 52:20, 22 industry 16:21, 23, 24 18:15 32:14 136:15, 20 inexpensive 141:23 Information 4:14 18:4 35:7 37:18 43:13 48:15 81:21 87:22 101:10 128:2, 6 133:10 136:17 informed 134:7 informing 95:16 infringed 118:17 120:1 127:9 infringement 60:7 79:13 81:5, 10 117:24 119:25 125:5 128:18 135:16 | infringing 119:17 120:8 121:8 127:3 128:10, 13 Ingargiola 62:11 65:2 70:1, 25 72:1, 4, 11, 23 82:11, 15 96:14 111:13 112:13 Ingargiola's 98:5 in-house 13:2 initial 26:13 27:9 initially 27:2 initiated 117:4 ink 90:12 input 34:17 74:19, 21 insect 131:11 insert 131:6 inside 73:6 insofar 77:5 126:23 inspected 52:13 inspection 11:13 12:22, 23, 25 52:14, 16 inspectors 13:1, 2 36:23 41:19 inspiring 45:4 install 34:3, 4 installed 44:15 instance 143:4 instrumental 100:14 insulate 132:5 insulated 130:17 131:2, 3, 7, 10, 10 insulating 131:17, 19, 20, 24 132:10 insulative 132:7 Insurance 5:11 10:24 |
|--|---|---|--|---|

| | | | | |
|--|--|---|---|---|
| 32:11 42:12, 13 43:3, 5, 6 46:19 62:19, 20 63:21 99:18, 20 100:2, 6, 8 111:18 133:15, 17 intended 46:23 intends 38:8 77:20 interacted 55:12 interaction 69:10 109:15 interested 76:23 146:14 International 68:19 internet 40:25 82:2 interpretation 47:16, 20 49:15 50:8 140:6 141:16 interpreting 48:20 Interrogatories 3:16, 18 9:10 22:17 30:13 52:18 78:10 95:19 106:6 107:11 Interrogatory 22:22 26:11, 20 30:17 31:4 35:9 52:25 53:7 56:1 95:20, 21 97:3 interviewed 130:5, 7 intimately 75:19 investigations 60:12, 14 invite 133:22 involved 28:19 117:15 involvement 60:11 76:22 Island 21:19 | issue 90:19 118:8 issued 114:17 125:12, 18 126:1 issues 48:20 74:11 its 14:8 15:1, 13 23:8 33:1 44:20 52:11 56:9 79:3 87:24 98:13 106:11 132:20 < J > Jack 82:6, 12, 13 Jacob 111:5 Janice 46:18, 20 47:6 60:20 61:21 JANUARY 1:9 3:20 30:20 31:13 32:17 40:13 41:24 125:8 144:22 Jay 109:8 JERSEY 1:2, 20 2:4 69:5 83:25 Jim 27:11, 20 28:17 job 41:15 100:12 Joe 62:19 John 5:14 62:11 70:1, 25 72:22 73:12 82:1, 10, 11, 15 96:14 111:13 123:11, 21 John's 82:14 joke 101:4, 5 jokes 88:19 joking 102:5 Jones 32:8 34:17, 22 70:16, 19, 20, 21 Jr 4:17 6:6 | judge 121:14 125:12 126:17 128:7 July 72:2 121:25 jumping 58:7 June 6:2 62:19 84:20 118:6 119:19 129:24 Juno 85:6 jurisdiction 103:14 104:1, 3 jurisdictions 116:8 < K > Keep 7:18 23:13 51:7 kept 120:21 137:25 key 16:18 120:3 kidding 102:3 knew 23:9 54:8 67:9 101:15 119:9 know 7:5 11:23 15:15 17:2, 8 18:19 19:18 21:22, 25 22:13 25:11 26:11 30:9, 9 33:8 34:14 35:13, 20 37:8, 12, 12, 14, 16 38:3, 5, 7, 8 39:21, 23 40:9 44:22 45:5 47:7, 8 48:16 51:7 54:7, 18 57:22 60:22 65:25, 25 66:20, 23 67:3 68:15, 22 70:10, 18, 18, 21, 23 75:3 76:1 77:8, 20, 22 79:17 82:4, 17 83:4 84:3 | 86:3 87:12 88:2, 5 92:11 94:15 98:4 99:19 100:2, 4 101:24 104:6 105:6, 16, 25, 25 108:17 109:20 110:14 111:5, 7, 19 113:1 115:19, 21 118:11 121:12, 21 124:17, 19 127:5 128:20 129:9, 15 130:9, 9 131:24 132:1, 4 133:16 137:18 138:8, 8, 9, 11, 13 knowledge 25:10 58:4 66:24 68:11 74:22 78:5 87:9 88:11 92:17 98:23 121:4 131:4 132:4 136:4 knowledgeable 29:15 known 119:20, 20 < L > Laatsch 111:1 labeled 36:7, 7 lack 98:23 lady 68:5 86:16 language 48:7 72:16, 17 93:1 100:15 latching 118:10 120:4 lately 87:6 latest 18:4 law 64:1, 2, 5, 5, 10 121:24 lawsuit 125:8 134:9, 12, 23 lawsuits 77:14 | lawyer 123:12, 21 lawyers 106:6 layman 18:2 leading 90:25 learned 13:11 23:21 97:23 136:20 leaving 121:3 led 13:19 left 47:3 110:9, 19 left-hand 86:24 legacy 115:2 legal 81:1 lets 58:22 127:14 letter 5:1, 3, 14 66:17 67:1 81:12 82:24 94:20 95:1, 2, 6, 14 96:4, 9, 10 97:6, 24 98:12 100:10, 17, 19, 22, 24, 25 101:7, 10, 23, 24 102:3, 3, 6, 8, 13, 16, 18, 20, 21 103:2 104:4, 8, 19, 20, 23, 24 105:7, 10, 13 106:12, 14, 20 107:15, 22 108:17, 18, 19 109:2, 7, 11, 18 111:14, 17 112:25 113:19 114:13, 16, 20 115:7, 11, 12 121:22 122:4, 24 123:4, 11, 20 124:21 letters 47:12 63:8 87:11 101:3 level 34:14 101:15 liability 47:1 liaison 99:23 |
|--|--|---|---|---|

| | | | | |
|--|--|--|---|--|
| Liberty 1:19 2:9 license 66:10 Likewise 8:24 54:11 Line 70:17, 18 91:3 93:10 147:4 link 45:5 Lisa 32:8 33:8 34:17, 22 list 36:2 listed 139:19 Listen 37:12 literature 44:20 87:24 130:25 140:19 litigation 102:23 105:18, 21 117:4, 5, 16 119:19 129:7, 10 Little 4:17 6:6 10:3, 4 17:1 19:17 21:1, 3, 12, 24 26:22 31:19 37:21 38:25 40:9, 9 46:20 53:11 75:3 79:5 81:3, 22, 25 83:4 89:4, 10, 15 91:17 92:7 115:16 130:7, 9 135:4, 8 137:15, 22 138:12 145:11 Little's 51:5 138:24 LiveNote 146:4 lives 85:20 LLC 32:5, 24 55:9, 13 LLP 1:18 2:6 lobby 100:10 local 36:24 103:13, 25 116:8, 25 located 30:23 90:7 119:1 | logo 88:21 Lois 111:4 long 9:21 21:19 longer 22:7 93:7 look 9:2 26:3, 3 27:3 28:23 29:21 35:17 39:18 43:16 53:20 61:12 72:20 80:21 84:16 109:5 122:12 123:10, 19 138:5 139:5 142:17 looked 9:5, 6, 6, 11 17:20 32:12 45:19 65:10 66:2 88:25 102:17, 22 looking 19:4 21:24 72:7 79:19 97:3 109:5 looks 24:14 35:14 43:24 45:6 46:25 95:14 108:5 109:13 Loomis 110:7 111:9, 9 124:9, 14 Lori 15:10 53:2, 8, 15, 16, 23 54:21 58:24 lot 7:23 9:6 11:18 13:10, 12 21:25 28:18 30:1 35:15 39:19 40:3, 4 51:4 68:16 84:6 102:20 112:8 117:5, 15, 19 124:25 125:1, 2 126:25 127:6 132:1 | 141:7, 21 louver 17:23 louvered 35:20 131:8 Louvers 117:23 118:15, 23, 24 119:5, 8 120:7, 25 121:5 131:1 love 102:21 Lower 5:10 43:6 79:2 81:18 86:21 137:22 lowest 50:12 Ltd. 124:10 127:4 ludicrous 48:13 < M > machinist 27:20 Magnetic 12:12 13:6 main 36:13 maintaining 52:12 maintains 137:1 major 68:21 majority 128:2 maker 11:9 12:18 17:5 27:20 making 20:9 100:14 Malitsky 53:9, 15, 24 54:21 59:5 66:20 Malitsky's 15:10 53:3 management 19:14, 16 manager 11:10 13:7 19:19 managers 20:22 35:2 69:6 | manages 19:20 manner 38:9 manufacture 12:14 86:6 manufactured 46:23 53:16 127:9 manufacturer 90:25 manufacturers 35:23, 24 63:2 manufacturer's 35:17 manufacturing 10:21 11:8, 11 12:11, 12, 13, 15, 18 52:13 84:5 86:4, 10 March 117:24 118:5 MARGARET 1:15 146:2, 18 margin 144:9 Marino 55:20 Mark 4:14 14:13 20:4, 6 22:17 30:11 32:16 37:4 38:14 40:15 58:25 65:3 70:2 75:6 80:2 84:17 86:25 91:8 95:4 108:10 109:23 114:1, 7 115:25 121:23 125:19, 23 143:13 144:13 MARKED 3:7 4:15 6:4 8:3, 6, 17, 21 14:16 22:19 23:22 30:14 32:19 37:5 38:16 40:17 59:2 65:5 67:7, 13 70:3 75:8 80:4 83:18 89:18, 23 90:9, 13 91:10 95:7 | 102:8, 10 104:11, 13 108:12 109:25 114:8 116:2 122:1 125:21 126:3 129:19, 22 133:12 144:17 Market 2:9 35:16 54:13 80:20 83:1 91:18 112:18 121:5 132:10 135:6 136:10, 15, 17, 20, 25 137:3, 8 138:14 139:17 marketed 23:23 Marketing 4:5 19:18 119:11 marketplace 10:16 24:17 35:8 99:17, 18 138:7 Markman 126:14, 16 Martin 85:22 mass 46:7, 23 match 56:17 Material 4:5 7:23 24:2 103:15 131:17, 19, 21, 25 materials 11:13 13:11, 12, 14 131:10 matrix 142:15 matter 1:14 31:3 114:19 141:18 mcarter@smart vent.com 41:9 mean 18:16 55:13 97:10 102:22 113:8 123:15 127:5 134:5 135:10 137:6, 7 141:15 142:5 |
|--|--|--|---|--|

| | | | | |
|---|---|--|--|---|
| meaning 44:11 94:8 98:13 116:6 means 18:5 55:13 85:3 96:4 124:19 meant 47:5 123:17 137:10 measure 16:21, 25 17:5, 8 20:19 27:9, 24 28:4 measured 73:7 measurement 17:7, 12 27:2 measurements 23:1 26:10, 12, 13, 16 27:1, 22 30:3, 5 73:5 measuring 11:12 16:16 22:24 23:8 26:24 27:21 mechanical 13:22 mechanism 118:10 120:4 media 41:12 mediation 55:5 meet 11:1 82:24 90:5 meeting 46:18, 21 47:6, 25 60:20, 21 61:20, 22 104:16 111:5 130:1 meets 13:3 members 34:17 46:19 memo 63:17, 20 64:4 69:25 72:4, 12 111:17 Memorandum 4:7 mentioned 21:14 28:13 122:23 merge 115:14 merged 86:5 | merger 83:23 84:6 Messrs 135:3 met 11:3 12:19 13:21, 23 55:1, 2 97:13 100:15 104:9 111:2 119:2 meta 79:2, 22, 24 81:18, 22 metal 13:16, 20 86:20 Metals 12:12 13:6 method 16:16, 25 45:22 MICHAEL 1:12 2:8 3:3 5:1, 5, 14 7:1, 6 21:19 41:14 45:3 52:8 53:10 66:8 148:3, 12 middle 53:8 Mike 79:8 111:7, 8, 8, 9 124:9 military 12:9, 16, 16, 19, 25 13:3 million 56:23 132:13, 14, 15, 19 144:23 145:2, 6 Millwork 117:23 118:15, 24 mind 15:22 98:16 mine 27:19 minimum 73:6 minute 19:4 122:12 minutes 62:22 106:1 107:18 miraculous 101:6 mischaracterize s 122:17 | misleading 78:3 142:1 misled 44:10 missing 73:11 mission 35:4 Mississippi 104:17 misuse 83:6 misused 39:15 Mitchell 46:18, 20 47:6, 13 60:20 61:21 mitigation 33:9 mloomis34 110:6 model 130:16, 17, 18, 23 131:7, 8 models 93:10 130:13 moment 71:25 78:2 84:8 89:15 92:5 95:18 moments 106:18 money 48:25 monopoly 139:7, 12 Montgomery 85:22 125:18 month 132:24 months 104:9 108:16 morning 7:5, 9 mouth 7:19 move 27:8 77:23 moving 47:3 51:8 multiple 27:23 51:24 71:15 120:3 municipalities 36:24 < N > name 7:5 21:21 22:3, 4 35:17, 18, 22 | 41:13 51:5 52:8 56:3 61:24 62:13 81:5 104:5 114:6 118:16 119:4, 6 121:20 named 68:5 names 110:25 National 10:24 19:19 25:25 48:4 natural 130:16, 19 Neal 124:3 neal@usafloodv ents 110:16 nearly 33:5 139:7 necessary 49:8 need 10:16 11:1 16:5 73:4 91:25 94:18, 19 141:8 needed 53:22 needs 52:13 140:20 negative 125:1 neither 59:20 127:18 146:11, 13 NER 52:3 NES 103:9 114:25 115:1, 2 net 14:8 15:1, 13, 18 16:2, 7, 11, 11, 16, 17, 21 17:12 22:15 25:24 26:2 27:24 31:15, 15 57:20 58:1 76:24 134:21 140:14 never 24:10 26:2 61:15, 18 68:3 71:4 73:15, 19 74:2, | 19, 23 75:2, 24 99:9, 10, 15 NEW 1:2, 19 2:4 40:6 46:15 66:11 69:5 83:25 91:20, 22 92:1, 15, 22 93:17 96:1 110:17 newer 119:21 news 114:5 newsletters 45:5 NFA 16:22 25:24 NFIP 10:24 29:15, 19 32:9 35:6 46:19 62:20 82:8, 14, 21, 25 83:2 90:6 99:19 100:8 nickel 13:10 144:6 night 13:23 Nixon 121:24 Noncompliance 39:12, 17, 24 40:3, 4 Non-complianc e 38:14 nonemployee 22:10 nonengineered 18:12, 14, 22 23:12, 14 25:21, 22 28:7 30:25 31:16 38:1 54:9, 12 57:5, 13, 16 58:14 59:19 77:1 82:7, 22 86:17 118:20 119:14 127:16 134:11, 19, 20 135:5 136:16 140:11, 16 141:21, 22 Non-Engineere d 3:18, 21 30:19 31:12, |
|---|---|--|--|---|

| | | | | |
|--|--|---|--|---|
| 20 32:1, 17 34:8 37:3, 25 43:21 45:9 57:18 128:14 141:3 nonprofit 35:3, 4 North 32:10 65:21 Nos 67:14 126:4 notably 73:5 Notary 1:17 146:5, 19 148:17 noted 148:8 Notice 3:9, 12 8:8, 18 14:6 99:24 119:16 notion 124:21 notwithstandin g 39:3 135:16 Novack 28:16, 18 November 3:21 37:4, 9 80:1 81:4 97:7 106:12 nowadays 116:18 Number 8:7 14:6 22:23 26:11, 21 30:18 31:7, 7, 23 45:10, 20 46:13 47:19 51:11 78:11 79:8, 9, 10 84:11 92:9 95:21 97:3 103:2 116:14 118:11 144:20 numbers 34:24 40:21 130:24 138:11, 24, 24 142:16 numerous 31:9 48:20 < O > | object 51:7 92:4 Objection 33:14 36:4, 16 38:22 48:15 49:6, 21 50:4, 15, 20 55:15, 22 61:14 63:18 64:7 65:23 72:15, 25 73:16 74:4 77:7 78:20 93:22 96:21 98:1, 14 100:18 101:18 102:1 103:19 106:23 107:25 111:25 112:7 113:9, 16 116:11 117:7, 17 118:1 122:10 123:6 124:24 128:1 134:3 137:17 139:2, 9, 14 141:19 142:2, 10 Objections 3:13, 16 6:3 22:16 144:14 obstructed 17:21, 21, 24 18:6 35:20 57:15, 24 58:1 80:19 obstruction 141:9 obstructions 18:2 obtained 24:23 52:11 65:13 70:10 78:17 obtaining 100:10 138:20 obviously 94:15 occasion 55:4 69:4 occasions 29:13 46:10 | 51:23, 24 60:19 61:8 62:2, 6 63:5 68:14 71:14, 15 occurred 26:18 83:23 141:15 October 72:2 office 85:9, 16, 17, 17, 18 119:2 offices 1:17 official 100:5 103:13, 25 officials 94:17 99:24 101:12 Oh 39:2 56:5 67:21 69:16 73:13 75:24 103:6 110:16 111:8 Okay 7:22 8:2 17:12 22:15 24:21 29:4 31:11, 21 37:12 51:9 66:24 67:24 68:5 73:14 76:5 77:19 78:4, 13 84:2 86:23 88:19 89:13 90:3, 22 98:19 107:4, 10 108:7 109:13, 16 112:22 122:25 123:23 129:16 old 130:25 Oliver 48:1 94:21 96:11 97:12 101:13 103:12 104:9, 16 106:13 108:17, 21 111:3 114:16 115:11 Oliver's 97:24 once 24:15 ones 116:9 140:7 | ongoing 125:13 ONUFRAK 2:8 3:4 7:4, 6 8:5, 23 14:20, 21 15:4, 9 16:9 20:6, 21 22:21 26:25 29:5 30:16 31:21, 25 32:16, 21 33:21 36:9, 17, 22 37:7, 15 38:18, 24 40:15, 22, 25 41:2 48:18 49:10, 25 50:7, 17, 22 51:3, 10 55:18, 25 59:4 61:16 62:21, 25 63:23 64:11 65:7 66:4 67:15 69:14 70:5, 13, 15 71:10 72:21 73:3, 18, 23 74:7 75:10 76:14 77:4, 13 78:23 79:6, 10, 11 80:6 83:14, 20 89:3, 9, 12, 14, 20 90:15 91:12 92:10, 13 94:3 95:9 97:2 98:8, 18 99:5 100:21, 23 101:21 102:7, 12 103:21 104:11, 15 105:3, 5 106:1, 4 107:7 108:1, 14, 24 109:17 110:2 112:1, 11, 24 113:12, 18 114:3, 4, 10 116:4, 13 117:8, 14, 21 118:5, 7 120:15, 25 121:2, 11, 17 | 122:3, 11, 18 123:9, 18 125:3, 23 126:6, 11, 13 128:7, 9 129:16, 21 133:14, 24 134:6 137:21 139:3, 11, 16 141:24 142:4, 13 144:19 145:10 onufrakm@whi teandwilliams.c om 2:11 Onufrak's 37:12 48:16 open 14:8 15:13, 19 16:2, 7, 11, 12, 16, 17, 19, 21 18:7, 7 22:15 26:2 27:25 31:15 58:1 127:14 134:22 140:14 Opening 3:18, 21 17:21, 22, 24 18:7 23:12, 14 25:22 30:19, 25 31:12, 20 32:1, 17 34:8 37:3, 25 38:13 39:11, 16, 23 43:21 44:11 45:9, 21 48:2 57:5, 16, 18, 20, 24 58:1, 20, 21 80:19 82:7, 7, 23, 23 128:14 141:3, 21 openings 18:12, 14, 22 25:21, 22 31:17 45:23 54:9 61:13 99:16 140:10, 11, 16 141:22 opens 58:20, 22 |
|--|--|---|--|---|

| | | | | |
|--|-----------------------------------|------------------------------------|-------------------------------------|-----------------------------------|
| operation 13:18 | 145:13 | 136:11, 12 | periodic 132:22 133:5 | plant 11:10 |
| operations 10:21 13:7, 8 | pack 106:5 | parties 146:12 | permission 44:19 | 13:8 86:12, 14, 19 |
| opined 71:16 | packaging 87:8 91:6, 13 | partnered 32:13 | perpendicular 73:7 | plastic 53:20 |
| Opinion 4:7, 7 | Page 3:1 4:7, 7 30:18, 24 | parts 18:20 | person 19:22 | players 135:5, 10, 11 |
| 36:11 71:19 | 35:10, 19, 21 | part-time 22:3 | 41:12 70:23 | player's 47:1 |
| 96:18 97:20 | 43:16, 22 | party 15:7, 8 | 75:13 80:10 | playing 45:6 |
| 137:13 139:21 | 45:21 53:7 | pass 23:19 | personally 18:9, 25 35:25 | pleadings 92:16 |
| 140:13 | 66:7, 8 73:14 | passed 58:19 | personnel 130:1 | please 108:2, 6, 23 112:3 |
| opinions 125:11 126:20, 23 | 75:18 80:7 | Patent 5:15, 17, 19, 21, 23 | pertain 31:6 | point 20:5 |
| opportunities 61:7 | 84:10 86:3, 21 | 10:15, 17, 18 | 95:6 | 23:16, 17 |
| opportunity 138:18 | 87:13 88:3, 12 | 60:7 85:23 | pertained 31:23 | 24:15 45:1 |
| Oral 1:13 | 90:19 114:12 | 117:23 118:8, 11 119:24, 24 | pertaining 40:13 | 95:15 100:16 |
| 7:18, 19 46:16 | 123:10, 13, 14, 15, 16, 17, 19 | 120:2 125:5, 18, 24, 25 | pertains 77:5 | 103:9 109:6 |
| Order 133:13 | 132:12 133:25 | 126:7, 8, 24 | 85:5 | 110:11 113:23 |
| orders 125:12 | 134:7, 15, 24, 25 136:9, 13 | 127:10 128:18, 20 135:16 | ph 1:23 | 122:24 124:14 |
| original 85:23 | 142:14, 17 | patents 10:19 | Phil 70:16, 18 | 133:21 |
| 88:20 | 144:8, 20 | 11:13 77:24 | Philadelphia 2:10 11:22 | pointed 16:24 |
| originally 13:24 56:13 | 147:4 | 78:3, 15, 18 | 12:4 | pointing 116:7 |
| outlined 94:21 | pages 3:24 | 118:18 125:16 | phone 63:6 | police 83:5 |
| outside 41:16 | 22:23 52:19 | path 94:22 | 130:4 133:22 | policing 83:9 |
| 133:4 134:9 | 67:11 78:12, 12 148:4 | Paul 19:23 | Photocopy 4:23 87:16 | policy 99:1, 11 |
| overarching 50:1 | paid 69:11 | 62:13 102:16 | photograph 4:23 | popped 119:18, 23 |
| overdo 89:12 | 143:4 | PE 66:10 | photographs 38:1 | portion 68:21 |
| overlap 92:12 | paper 11:5 | Peabody 121:24 | piano 45:6 | 78:6 86:14 |
| oversee 51:17 | Paragraph 14:22, 23 | Pennsylvania 2:10 | pick 63:6 | 90:11 138:14 |
| overstates 14:7 15:1, 13, 18 | 45:20 47:19 | people 13:21 | picture 43:20 | position 9:19 |
| overstating 22:15 | 78:1, 1 84:10 | 33:9 36:14, 25 | 91:8 | 96:8 103:23 |
| owned 86:16 | 90:1, 2, 4, 18, 23 91:5 | 39:8 43:5 | pictures 54:12 | possible 8:1 |
| owner 32:8 | 103:11 | 72:19 79:14 | piece 11:5 | 19:5 |
| 85:5 86:25 | paragraphs 114:12 | 99:24, 25 | 16:18 73:11 | possibly 45:7 |
| 110:7 | paraphrased 72:11 | 100:1, 2 104:6 | pipe 17:19, 25 | 69:18 133:15 |
| owners 34:3 | part 13:20 | 111:2 117:20 | 18:7 | postgraduate 11:25 |
| owns 10:7 | 25:25 52:12 | 138:6 | Place 2:9 | post-secondary 11:25 |
| | 53:4 79:19 | percent 137:2, 2 144:10 | 72:2, 4 146:8 | potential 135:2 |
| < P > | 111:1 120:9 | percentage 9:25 33:25 | Plaintiffs 1:4 | practical 112:17 140:13 |
| P.C 2:3 | 134:1, 11, 23 | percentages 138:25 | 2:6 | 141:18 |
| P.E 80:9 | participants 139:17 | performed 51:25 136:13 | Plaintiff's 3:13, 16 6:3 | practices 61:4 |
| p.m 89:17 | particular 16:13 46:8 | period 30:4 | | precision 27:23 |
| 129:17, 18 | 68:15 69:9 | 145:1 | | pre-existed 25:8 |
| | | | | pre-existing |

| | | | | |
|---|---|--|--|--|
| 24:10 premium 43:6 preparation 105:7 prepare 9:2 prepared 8:15 69:19 92:6 prepares 132:22 133:4 present 1:21 president 9:20, 21 52:9 pressure 44:12 prestigious 51:19 pre-TB 103:2 Pre-TB1 103:5 pretty 34:14 54:25 82:25 87:7 102:17 138:10 Prevent 5:10 previously 23:22 price 142:18 143:1, 3, 19 144:5, 6 priced 142:7 prices 142:20, 21, 22, 23 143:25 pride 91:1 primarily 11:4 13:20 82:8 130:11 132:14 primary 130:13 printed 3:24 prior 14:2 52:3 99:9 privately 10:10 proactive 20:18 probably 11:23 21:25 procedure 42:3 proceed 7:24 process 29:19 37:20, 24 produce 69:7 108:6 121:14 | produced 46:7, 23 50:24 65:3 68:1 69:24 74:24 104:20 105:18 113:2 121:22 Product 4:3 12:23 13:2, 12, 19 33:19 46:23 48:4, 7, 11 53:16 59:7 63:2 80:21 82:4, 5 83:1 87:24 90:24 91:2 92:15, 22 93:10 94:7, 18, 22 96:1, 12 98:25 99:1, 13 103:16 106:8 112:14, 15, 16 114:14 115:8 118:16, 19 119:4, 7 120:7 121:5, 8 127:3, 8, 25 128:10, 13 129:2, 4 132:10 136:11, 12 142:15, 18 production 13:9 PRODUCTS 1:3 10:25 12:14, 19 24:17 32:23 33:2 51:18 59:11 85:6 87:2 91:22 92:2 93:13, 21 94:13, 19 95:25 98:22 99:7 101:3 112:16, 19 130:12, 14, 24 131:14, 17 132:20 134:16, 20 136:18 142:7, 8, 15 products.Inc. 87:11 Professional 1:16 146:3 | professionals 44:9 profit 144:9 Program 10:25 prohibited 112:18 project 12:17, 18, 20 45:23, 24 projects 33:9 46:9 promoting 112:18 pronounced 75:25 proof 105:13 proper 71:17 97:19 properly 36:7, 8 133:22 propounded 148:6 protection 130:17, 20 Protective 133:13 provided 133:11 provides 69:9 Public 1:17 41:12 104:4 146:5, 19 148:17 publications 136:15 publicly 136:14 published 34:23 37:3, 8 publishes 32:1 86:17 publishing 54:11 purchase 13:13 purchased 10:15, 17 13:10 purchasers 33:12 | purchasing 13:10 purport 67:11 87:13 132:9 purports 14:14 37:2 41:23 65:1 69:25 89:24 95:5 123:11, 20 purpose 42:24 Pursuant 3:10, 13 pushes 127:14 put 34:19 35:14 49:24 136:7 144:1 puts 44:2 putting 47:4 79:22 < Q > quad 143:7, 17, 23 quality 10:21 52:14 quantify 32:14 question 7:17 14:10 15:22 16:4 23:4 24:5, 21 25:7, 16 29:3 37:13, 13, 19 47:8 48:16, 21 50:5 56:23 60:2, 23 64:3 67:18 71:7 76:1, 10 88:4, 9, 10 92:14 99:4 105:4 107:8 108:23 112:3, 13, 22 113:23 115:16 117:13 121:3 122:16 123:2 134:14 questioned 134:17 questions 7:16 15:23 31:6, 22 52:19 64:8 | 102:20 144:16 145:11 148:6 quickly 54:25 115:23 Quinn 29:8 68:6 70:1, 24 71:12 72:22 74:8, 20 75:6, 11 76:20 77:21 95:4 99:21 100:9 101:2, 3, 7 108:9, 16, 20, 25 109:18 Quinn's 72:4, 11 quite 39:20 42:20 55:23 79:16 85:2 133:8 137:6 quote 55:12 106:10 112:13 114:12 quotes 90:4, 23 < R > raises 90:19 range 134:22 ranges 144:9 rated 26:4 134:21 140:18, 24 ratio 24:18 57:15 Raub 133:6 raw 13:12, 13 RCQuinn 75:12 read 30:8 39:13 66:1 71:8, 22 73:12 98:17, 19 109:12 112:9 126:20 133:18, 18 148:4 reading 13:23 109:8 113:11 real 53:17 realize 17:10 39:7 87:16 |
|---|---|--|--|--|

| | | | | |
|---|--|---|---|---|
| really 11:4, 14 61:12 94:1 96:16 101:6 102:18 Realtime 146:3 realtors 43:5 reason 93:24 120:20 141:25 142:3 147:6, 8, 10, 12, 14, 16, 18, 20, 22, 24 reasonable 18:8 30:7 33:25 47:10 49:9 58:2 143:18 reasons 83:9 Rebecca 29:8 68:6 70:1, 24 71:12 72:3, 11, 22 74:8, 20 75:5, 11 76:20 77:14, 21 95:4 99:21 100:9 108:8, 15 109:18 recall 26:8, 9, 18, 23 54:17 55:7 57:20, 22 62:7 89:5 118:9 121:15 recalled 89:17 receive 105:17 received 46:5, 16 66:2 95:13 104:22 105:14 recess 62:23 129:17 recipients 37:24 recognize 41:3 43:20 65:8 67:25 70:6, 7 87:18 110:3, 5 122:4 recollect 9:12 104:16, 19 108:25 121:7 130:1 132:8 | recollection 22:12 81:16 132:17 144:4 record 31:18 70:13, 14 71:8 123:7, 8 records 49:12 137:25 refer 90:23 123:4 reference 42:7 78:3 86:1 96:16 98:5 114:16 123:1 137:20 referenced 76:3 111:18 references 17:16, 16, 17 67:16, 22 referred 24:2 43:22 47:18 63:16 64:4 83:3 referring 15:10 40:22 52:2, 25 82:16 84:14 97:25 122:7 126:9 refers 23:1 30:18 38:13 43:17 51:11 84:11 97:4 111:14 142:14 reflect 95:25 125:7 refreshes 81:16 refutes 124:21 regard 29:25 60:1 64:3 65:17 78:15 88:9 regarding 80:14, 16 region 85:19 regional 20:22 Registered 1:15 56:3 84:12, 20 146:2 | registration 84:11 regular 28:14 regulations 11:4 31:9 45:12, 16 63:12, 25 68:9 100:16 140:7 141:16 Rehoboth 80:9 Reichard 75:18, 20, 22, 24 76:1 REIHL 1:15 146:2, 18 reiterate 96:14 relating 136:15 relations 41:12 relationship 32:22, 25 33:10 86:18 relative 146:11, 13 release 114:5 relevant 45:4 136:17 relied 67:7 68:7 111:21 112:4 relief 128:8 relieve 44:12 remainder 34:2 remember 22:3 30:1 53:15 54:1, 24 105:11 109:14 113:11 127:8 131:8 138:3 remind 122:20 removed 20:14 34:14 87:7 rendition 88:20 renewed 84:13 87:15 rep 22:6, 7 38:20, 21 39:3 110:18 124:16 | repeat 71:7 108:22 rephrase 134:14 replaced 22:8 replies 108:4 reply 106:21 108:5 replying 72:10 Report 6:1 20:25 38:14 39:12, 14, 17, 24 68:3 75:18 115:3 129:24 132:12 142:14 reported 66:20 Reporter 1:16, 17 71:8 146:3, 3, 4, 5 reports 20:25 21:3 50:23 67:12 68:1 103:12 representative 7:9 representatives 7:12 19:4, 21 20:24 21:14, 15 22:11 39:5 representing 7:7 123:12 reps 19:24 39:14 61:10 110:8 request 34:10 120:17, 18 144:20 requested 71:9 Requests 6:4 34:10 144:14 requirements 10:24 11:1 12:20 29:16, 20 82:24 90:5 research 18:21 136:14 reserve 121:11 resold 143:10 respect 32:14 54:15 74:10, | 11, 13, 19 117:5 122:23 respond 105:1 responded 104:24 response 31:1 66:1 105:6 113:22 Responses 6:3 144:14 responsibility 11:5 88:1 138:13 responsible 12:21 rest 72:9 restate 47:14 result 44:14 93:2 116:25 resumes 62:24 129:18 retail 142:20 143:19 retired 21:7 returned 97:13 reveal 128:5 revealed 120:12, 21 revenue 132:13 review 20:20 37:23 52:14 53:2 73:8 78:2 79:14 98:22 99:1, 7 reviewed 9:9 26:15 44:22 65:10 91:25 111:16 125:11 reviewing 66:3 70:25 reviews 78:4 98:20 Revised 3:9 8:8 92:1 revision 75:23 76:2, 7, 13, 18, 24, 25 77:9, 10 revoked 66:10 Richardson 110:13 124:7 |
|---|--|---|---|---|

| | | | | |
|---|---|---|---|---|
| right 14:19 16:2 23:9 24:8 25:1, 23 26:2, 22 31:4, 10 34:5, 22 36:15, 18 39:9 42:16, 22 47:3 48:20 49:5 50:25 54:5, 19, 21, 25 55:14 56:4, 11 58:5 66:5 67:23 68:9 74:3, 14 75:21 78:19 80:14 81:7 83:14 84:1, 21, 22 85:1 89:6 91:6, 14 92:6 93:11 95:3, 12 98:9 99:12, 25 102:13 103:3, 5, 5 106:2, 15, 16, 22 107:13, 16 108:6, 21 109:9, 9 111:19, 23 112:2, 5, 23 113:4 114:21 115:1, 13 118:6 121:11 124:3 125:5, 16 127:6 131:8 133:19 135:7, 17, 22 136:22 137:23 138:6 139:4 140:5, 21 141:4, 12, 25 143:21 145:6 right-hand 70:9 84:21 86:22 risk 42:14 43:4 58:7 Road 1:18 role 45:3 68:22 rose 143:25 Ross 110:13 124:7 rough 17:19 | round 17:19, 25 RPR 146:18 rule 68:19 ruler 17:9, 10 rules 11:3 29:18 31:9 45:12, 16 ruling 49:4 50:2 running 11:10 13:8, 18 runs 19:17 Rychek 27:11 R-y-c-h-e-k 27:13 < S > safe 12:16 sale 56:10 sales 19:17, 19, 19, 24 20:22, 24 33:19, 22 39:5, 14 42:25 44:20 84:4 98:12 110:8 116:6 121:7 127:25 132:20 135:12 138:5, 18, 21 142:5 143:2 144:21 145:1, 6 salesmen 22:11 satisfied 100:1 saw 37:23 saying 7:20 41:6 56:11 82:21 90:24 95:1 102:5 115:4 124:17 131:22, 22 143:19, 22 says 25:24 26:15 30:23 38:25 41:22 44:9 49:4 50:2, 8 56:1 66:6, 8 73:20, 21 76:6 84:12 85:5 86:24, 25, 25 90:4 91:5, | 6 95:21 96:5, 10 97:4 101:23 103:11, 12 107:21, 24 112:13 114:13 115:7, 7, 11 123:1 124:22, 22, 25 125:2 132:12 133:25 134:7 135:1 136:9, 13, 24 137:19 140:19 144:9 scale 27:24 scheduling 13:8, 9 school 11:18 12:5, 6 science 62:9, 10 scope 134:9 Scott 10:7 13:21, 22 screen 82:2 screens 35:21 se 130:18 search 18:22 82:2 119:18 Second 3:18 30:13 37:8 38:6 39:13 43:16 45:20 80:7 87:4 95:18 106:5 114:11 see 19:5 35:16 38:19 40:13 42:7 45:25 49:13 53:12 66:2 67:16 72:6, 8, 14, 19 76:8 81:8 84:14 85:1 90:16 104:22 113:8 122:8, 13, 25 144:2 seeing 34:23 68:4 75:17 seek 63:11 | 121:15 seeking 34:3, 3 seen 23:13 61:18 64:22 65:11 68:3, 18 75:2 78:22 87:6 95:10 99:15 105:7, 10, 20 112:25 sell 33:1 83:6 138:8 141:20 142:23 143:15 selling 57:3, 5, 9, 12, 14 80:23 140:7, 10 142:18 sells 58:4 Semi-retired 21:8 send 38:23 39:3 42:4, 4 62:17 sending 108:25 sense 38:11 84:6 111:9 sent 38:19 40:12 41:1, 5, 23 42:1 63:8 65:20 66:25 75:16 82:25 97:12 104:21 105:12 111:13, 16 113:14 September 137:1, 7, 13, 19 Sergeant 86:20 series 144:16 serious 88:20 service 12:9 48:4 services 62:14 Set 3:16, 18 15:11 22:17 30:13 52:18 78:10 90:6 95:19 106:6 146:8 settled 118:13 120:5 128:23 Settlement 56:25 120:11 | 121:4, 13, 14 128:25 seven 89:4 104:9 108:16 shadow 88:15 share 74:23 86:19 104:4 136:10, 15, 17, 20 137:2, 8 138:15 shareholder 9:23 shareholders 10:2, 6 Sharon 21:12 130:10 133:1 Shaw 81:23 130:10 shed 37:19 sheet 13:20 148:8 shipped 12:23 13:2 shorten 37:20 Shorthand 1:16 146:4 shot 82:2 show 40:12 58:24 75:5 80:1 95:3 97:13 104:8 113:19 115:24 121:22 shown 25:2 shows 34:11 36:14 61:9, 10, 11 91:13, 14 side 11:14 46:19, 20 62:18, 19, 20 63:21, 22 84:21 99:20 100:8 sides 9:11 side's 120:17 signed 66:10 106:13 117:1 Simandle 125:12 126:18 similar 8:19 25:7 35:17 |
|---|---|---|---|---|

| | | | | |
|---|--|--|---|---|
| 40:2 53:17 56:6, 7 58:8 59:7 62:3, 3 127:22 simple 17:3 single 67:11 143:15, 19 SIOBHAN 2:8 7:8 sir 10:9 18:18 23:3 46:1 49:11 61:1 72:8 74:15 86:15 102:24 110:20 114:18 117:4 141:8 144:7 sit 58:3 Sitting 53:14 situations 68:15 140:17 141:14 six 139:19 size 47:4 skip 51:3 slightly 92:1 137:22 slowly 7:24 small 13:16 135:5, 10, 11 SMART 1:3 3:7 4:14 5:10 7:10, 12 8:4, 7, 17, 22 9:19 10:10 13:24 14:7, 11, 13, 17, 25 22:18, 20 27:10 30:12, 15, 19 31:7 32:18, 20, 23 33:1, 12 34:21 37:4, 6 38:15, 17, 20, 21 39:3 40:16, 18, 22 42:16, 18 45:11, 19 47:19 51:21 52:10 53:8, 22 55:12 56:3, 25 59:1, 3 60:11 65:4, 6 66:9 | 67:7, 14, 23 69:15 70:2, 4, 6 71:25 72:3, 7 74:2, 6, 9, 19 75:7, 9 77:24 78:9 79:2, 22 80:2, 5 81:17, 17 83:19, 25 84:8, 16 85:5 86:25 88:14 89:19, 22, 24 90:10, 14, 24 91:9, 11 93:20 94:12 95:5, 8, 19 97:5 99:1 102:8, 11 104:12, 14 106:11 108:13 110:1 111:14, 17 112:14, 15 114:9 116:3, 15, 21 117:4 120:23 121:23 122:2 125:20, 22 126:4 129:20, 23 130:12, 21 131:1 132:13 133:11 136:5 137:1 140:8 144:18 smartvent 82:3, 3 87:1, 10 Smart-Vent 86:1 smartvent.com 42:22 SmartVENTS 132:14 Smith 6:1 smooth 17:19 so-called 61:5 social 41:12 sold 18:11 23:16 83:1 128:10 140:12 141:22 solution 92:15 Solutions 32:3, 5, 24 33:6 | 54:16, 18 55:9, 13 56:2 57:1, 3, 9, 17, 21 58:4 77:15 91:20 92:22 93:17 96:2, 7 121:24 129:11 135:24 136:5 140:2, 9 somewhat 48:24 soon 24:14 119:23 sorry 39:2 66:1 71:6 75:24 106:3 118:3 142:2 sort 106:21 sought 65:16 South 32:9, 10 86:11, 12, 14 SPACE 1:6, 6 2:12, 12 3:7, 9, 10, 12 4:5, 18, 20 7:7 14:7 15:1, 12, 18 16:8, 8, 25 18:10, 11, 16 22:24 23:5, 7 24:11, 22 26:7 28:1, 3, 9, 24 29:21, 25 35:10, 12, 14 40:5, 13 41:6, 22 43:23 44:15 45:11 50:13 51:1 53:9, 17, 19 54:23 56:18 59:6 60:17 61:3, 5, 11, 11, 18, 23, 24 64:13, 17 65:3 66:25 71:11 75:17, 20 77:15 78:18 79:1, 24 80:14 81:19 87:22 88:5, 11 106:6 116:16 119:21 127:23 129:7 | 131:3, 13, 16 132:9 134:16 135:22 136:6 139:20 140:23 141:1, 17 142:8, 15 Space's 31:8 60:13 89:25 speak 8:12 specialists 27:21 specific 45:23 50:5 52:5 103:16 112:13, 18 specifically 23:6 29:24 45:8 46:21 70:25 80:14 124:3 specifications 13:3 speculate 37:18 127:2 27:12 29:6 spent 11:17 47:22, 23 49:1 spoke 53:10 69:2 136:19 spoken 116:17 Sprengle 125:19 spring 55:11 square 16:14, 14 17:13, 19 23:15, 15, 16, 17, 22, 23 24:2, 6, 12, 19, 24 25:9 57:7, 20 134:21 140:19, 20, 24 stacker 143:7, 16, 20 staff 97:12, 16 98:12 116:6 stainless 13:13 stamp 13:16 26:1, 6 48:12 70:8 113:3 | stamped 13:20 25:23 26:5 28:8 stamping 13:18 stand 92:11 115:10, 15 standard 9:18 16:20, 20 72:17 standards 47:18 48:21 49:15 standpoint 13:11 stands 104:6 start 16:11 80:7 110:9 138:16 started 11:9 16:15 23:7 29:14 119:23 124:11, 12, 12 starts 24:18 138:11 state 32:9 35:2 60:12 66:21 69:6 statement 11:6 95:24, 25 97:5 106:11 112:20 115:6 117:12 132:16 statements 99:6 132:23 133:5 STATES 1:1 5:15, 17, 19 35:4 69:8, 9 static 58:6 77:1, 10 stating 24:23 steadily 19:11 steel 13:13 stenographicall y 146:7 step 27:22 Stephen 52:7 Steve 133:6 stick 132:2 |
|---|--|--|---|---|

| | | | | |
|---|--|--|--|--|
| stop 57:3 67:1 72:23 73:15 74:3 stopped 57:5, 8 Street 2:4, 9 strictly 45:22 strike 142:6, 16 striking 54:3 string 4:12 95:3 strongly 49:12 structural 44:14 structure 19:15, 17 20:17 struggled 49:18 studied 20:8 45:15 49:12 stuff 21:25 30:2 124:25 127:1, 7 133:21 style 87:3, 10, 18 Subject 41:23 80:17 113:20 115:25 120:22 121:9 submissions 12:21 34:18 submitted 71:1 87:15 Subscribed 148:12 subsequent 97:11 109:2 136:24 137:9 substance 148:7 substantial 24:22 138:17 substantiate 111:22 112:5 sudden 23:18 24:17, 20 sue 53:22 55:9, 14 56:14, | 20 125:4 129:14 sued 128:16 suggest 23:9 142:25 suit 60:7 126:7 135:16 Suite 1:19 2:9 summarize 14:24 78:6, 14 summarized 26:10 summer 53:9 69:3 Sunvent 52:20, 22 54:15, 19 69:12, 13 129:11 135:25 Supplemental 3:12 8:18 support 106:7 supposed 88:16 sure 7:18 10:22 11:3, 5 15:6, 24 16:3 19:8, 16 21:20 23:15 25:19 26:23 30:6, 10 31:24 32:4, 13 34:13 35:6 36:6 37:10 38:4 39:20, 25 42:14, 20 44:3, 21, 24 50:16 55:23 57:19 59:12, 18 60:22, 25 62:7, 13, 15 67:3, 9 68:24 69:1, 22, 23 74:25 75:22 78:21 79:16, 19, 23, 25 80:25 81:2, 11, 14, 20 83:1 85:3 87:5, 7 88:7 93:15, 25, 25 94:4 95:15 96:7 100:14 101:9, 14, 19 105:19 107:1, | 24 110:22 119:8 120:19 124:6, 20 128:15, 22, 22 131:19 133:8, 21 Surely 127:8 surprised 65:16 Surveyor 44:25 surveyors 31:14 34:10 36:14 41:19, 24 suspect 51:20 105:22 sustained 44:14 SV-0000114 5:17 SV-0000261 5:21 SV-0000406 5:19 SV-0009857 5:3 SV-0027880 4:11 SV-0027882 4:13 SV-0031088 4:1 SV-0031145 5:11 SV-0031239 3:23 SV-0033224 5:5 SV-0033264 5:7 SV-0033782 5:1 SV-0034136 5:15 SV-0034139 5:8 SV-0034149 5:13 SV-0035433 4:9 | SV-0036118 4:14 switch 89:4 sworn 7:2 148:12 Sykes 55:1, 2 64:13, 17 65:2, 16 66:14, 25 71:1 72:2, 10, 23 78:17 87:9 96:15 133:15 135:1 symbol 44:17, 20 88:23 symbols 87:23 88:9, 10, 12, 25 SYSTEM 1:6 2:12 3:7, 10 4:18 7:7 22:25 SYSTEMS 1:7 2:13 3:9, 12 4:20 35:10 87:23 88:12 91:1 135:22 < T > table 115:22 134:15 142:17 tags 79:3, 22, 24 81:18, 22 take 7:8, 20 17:9 59:24 62:21 71:25 78:2 89:15 106:1 116:24 121:13 122:12 125:9 129:16 taken 1:14 26:11 60:5 61:10 62:2, 23 129:17 146:7 takes 17:14 talk 14:6 16:2, 10 17:18 20:12, 17 25:3 45:9 62:8 63:6 66:14 92:6 107:5 133:19 talked 74:20 | talking 16:7 23:2 59:10 62:16 75:13 118:20 121:21 talks 22:24 83:23 99:24 114:5 target 36:13 taught 13:22 TB1 17:16 47:17 48:20 49:15 50:12 63:14, 17, 21, 24 64:1 103:4 team 38:20, 21 39:3 40:8 44:2, 5, 8 Tech 75:19 Technical 9:13 19:20 116:6 technician 27:17, 18 technique 27:21 28:4, 6 61:25 TECHNOLOG IES 1:23 tell 9:5, 8 15:15 34:13 38:20 53:2 67:1 69:16 72:23 84:3 88:19 119:2 120:1 142:20 telling 95:13 123:20 tells 94:8 temperature 132:6 Temple 11:22 ten 26:24 tens 47:23 48:10 term 16:22 83:14 94:5, 8 97:14, 15, 15 116:7 terms 120:11 121:12 territories 20:2 |
|---|--|--|--|--|

| | | | | |
|--|--|---|--|--|
| Tertell 62:14 102:16 | 8, 17 97:11 101:14 102:4, 15 103:9 | 119:2 123:2 136:4 138:16 | trade 34:11 36:14 61:9, 10, 11 97:13 | Turning 51:11 90:18 98:9 |
| test 94:18, 19 | 106:18, 22, 25 112:10 117:19 | 145:1 146:8 | 119:6 | turns 20:25 |
| tested 97:17 115:5 | 119:5, 8 120:9, 19 121:13 | times 27:23 33:5 56:24 | trademark 56:3 78:25 | Twelve 20:1 67:20 |
| testified 7:2 32:24 80:13 107:18 | 125:17 126:12 128:4, 12 | 61:2, 2 62:18 63:11 | 79:12 81:5, 9 83:13 84:11 87:14 | two 15:20 35:11, 11 |
| testify 91:16, 17 127:6 | 131:6, 23 135:11 137:10, 15 138:3 | Tirpak 21:18 | trained 17:5 | 37:24 52:6 59:10 64:7 65:17, 20 |
| testimony 74:18 122:14, 17 138:20, 23 146:7 | 144:20 | title 27:14 | Transcript 1:12 53:5 | 70:25 79:2 88:15 91:17 92:1 93:2 |
| Testing 51:12, 17 52:1, 2, 4 | thinking 28:22 93:24 | today 48:8 53:14 57:10 | 133:12 146:6 | 94:25 95:17, 25 96:18 |
| Texas 110:9 | thinks 45:4 | 58:3 71:23 82:25 83:7 86:6 93:6 | transcription 148:5 | 97:20 100:4, 13 105:20 |
| Thank 89:14 145:10 | third 15:7, 8 86:3 103:11 | 96:8, 12 104:5 112:25 121:4 128:11 129:4 141:22 145:8 | transpired 54:24 | 111:16 125:23 130:12, 13 |
| theories 134:17 | Thomas 4:17 6:6 53:11 | told 61:11 71:4 74:2 | traveling 138:3 | two-thirds 134:25 |
| thereabouts 143:20 | thought 17:2 23:11 31:22 | 79:6 81:3, 3 91:18 96:9, 11 143:1 | treated 133:12, 21 | type 45:6 87:23 114:5 |
| thickness 17:6 | 54:9 57:7 58:2 77:9 | 91:18 96:9, 11 143:1 | trend 144:5 | typical 19:16 |
| thing 17:11 26:4 56:11 67:4 69:8 79:21 93:17 98:6 109:4 | 88:21 102:18 105:15 111:8 125:17 137:10 | Tom 10:3 19:17 21:21 22:12 31:18 38:25 79:5 | Trexler 6:1 | typically 141:23 |
| things 11:12 17:5 24:14 27:8 45:7 62:16 79:20 87:20, 25 120:3 124:23 132:1 | thousands 47:24 48:10 | Tommy 44:4 | tried 47:12 61:22 | typographical 144:21 |
| think 11:14 20:18 25:13, 17 28:9 30:2 32:10 33:8 35:13, 19 36:5 38:10 43:4 46:13 48:2, 16 49:7, 8, 22, 22 50:5 51:4 55:17 59:20 68:16, 21 72:16 73:12 76:10 82:15 84:5 91:16 92:3, 18 93:8, 25 94:21 96:5, | threat 56:12 threaten 116:24 129:10 threatened 55:8, 14 56:19, 20 66:10 81:1 129:14 | Tommy's 42:5 tool 11:9 12:17 17:5 27:19 | trouble 48:25 true 18:23 19:12 36:3 46:3 49:20 50:14, 19, 21 54:2, 23 55:8, 11 56:5 62:4 63:17 65:22 66:12, 22, 23 95:24 99:6 101:25 103:8 107:19 112:6, 10 134:10 135:13, 19 144:5 145:1 146:6 | ugly 88:20 uh-huh 7:20 ultimately 124:9 unable 136:16 unannounced 52:14 unavailable 136:21 understand 7:11 8:11 14:5 16:4 23:18 27:7 29:18 31:1 33:12 45:15 48:19 49:9, 11 61:20 63:24 64:1, 4 65:20 85:4 92:5 96:3 100:3 102:19 103:17 |
| | time 11:18 19:7 28:3 30:4 40:5, 6 52:15 54:21, 25 55:1, 16 56:24 62:8, 8 68:4 69:2, 11 72:22 87:10 88:14 98:17 99:6 109:19, 21, 22 111:10, 22, 22 114:20 | top 4:12 19:17 27:4 43:21 Topic 14:6 31:6, 7 40:10 45:10 51:4, 11 58:7 60:10 78:24 79:4, 9, 10 80:2 89:21 92:5, 7, 9 116:14 117:3 topics 7:24 8:12 89:4, 5 92:11 total 15:7 18:17 touch 64:14, 18 | truly 49:13, 13 try 7:18 15:25 25:15 trying 11:18 43:6 74:13 Turn 78:9, 24 84:8 86:21 87:13 88:3, 8 95:18 116:14 134:24, 24 142:17 143:10 | |

| | | | | |
|---|---|--|--|--|
| 113:4 117:22 118:13, 25 124:12 125:15 126:7 130:11 131:5 134:17 135:4 137:6 140:18, 23 understanding 10:23 60:11 79:12 126:22 134:2 understood 62:1 100:5 Underwriters 46:12 underwriter's 63:20 underwriting 47:17 63:16 64:3 Unedited 5:8 Unfortunately 92:10 unique 45:23 46:8 47:2, 2 unit 35:13 UNITED 1:1 5:15, 17, 19 35:4 69:8 University 11:22 unobstructed 58:20 unpractical 141:14 Unusual 54:4 update 38:9 upper 86:24 upset 53:19 Urlick 52:7 USA 111:11 121:18 123:12, 21, 25 124:9, 14 125:4 126:10 127:3, 8 128:3 129:3 135:1, 13 136:6 139:23 USAfloodairven ts.com 59:8 60:1 | use 13:13 16:19 28:4 44:19 56:9 57:23 79:24 87:20 88:23, 25 94:8 97:16, 17 98:24 99:18 116:9, 10 127:22 130:18, 23 138:23, 24 140:15 user 143:11 USPTO 5:21 usually 16:23 utility 77:24 < V > varies 33:5 vast 128:1 VENT 1:3 3:7 4:5, 14 7:10, 12 8:4, 7, 18, 22 9:19 10:10 13:24 14:13, 17 15:1, 21 16:13, 14, 17, 24 17:14 22:18, 20, 25 23:10, 14, 18, 22 24:15, 15, 16, 17 25:10, 24 26:2, 3, 7, 16 27:10 28:2 30:15, 23 32:20, 23 33:1 34:3, 4, 21 35:10, 11, 14 37:6 38:17, 20, 21 39:3 40:18, 23 42:16, 18 43:23 45:20 46:7, 24 47:4, 4, 19 51:21 52:10 53:8, 20, 22 54:10 55:12 56:25 57:17, 21 58:5 59:3, 16, 21, 22, 25 65:6 66:9 67:14 69:15 | 70:4 74:2, 6, 9 75:7, 9 77:25 78:9 79:2, 22 80:5, 19 81:17, 18 82:22 83:19, 25 84:9, 23 85:3, 5 86:17 88:14, 15 89:19, 24 90:5, 14, 20, 20 91:2, 11, 20 93:21 94:12, 16 95:8, 19 98:23 99:1 102:11 104:7, 14 108:13 110:1, 8, 10 111:14, 17 114:9 116:3, 21 117:4 118:22 120:24 122:2 125:22 126:4 127:13, 13, 16, 17, 19 129:20, 23 130:12, 12, 21, 22 131:1, 2, 4 133:11 135:6, 13 136:5 137:1, 3 138:10 140:8 143:5, 15, 19 144:18 V-e-n-t 87:1 Vent, 86:25 Vent-10 59:1 Vent-11 65:4 67:7, 23 71:25 72:7 74:19 Vent-14 70:2, 6 72:3 Vent-16 80:3 Vent-17 84:17 Vent-25 90:10 Vent-26 91:9 Vent-27 95:5 Vent-28 102:9 Vent-29 104:12 Vent-34 121:24 Vent-35 125:20 | Vent-5 30:12 Vent-6 32:18 Vent-7 37:4 Vent-8 38:15 Vent-9 40:16 ventilation 9:14, 18 16:23 26:1 130:16, 19 venting 91:1 Vents 5:10 10:16 14:3, 8 15:13 18:12, 14, 15, 19, 20 23:8 24:19, 24 25:23 28:1, 3, 7, 24 29:22, 25 31:8 33:13 35:11, 12, 15, 20 36:6, 10 37:22 38:1, 5, 10 44:15 45:12 50:14 54:9, 13 56:10 57:3, 9, 12, 13, 15 60:13, 17 61:4, 6, 12 66:15 76:17 77:10 80:23 86:6 89:22 91:17 95:22 96:19 97:5, 21 98:24, 24 99:12 106:11 112:19 118:20 119:10, 11, 12 121:19 123:12, 21 124:1, 10, 15, 22 125:4 127:4, 9 132:14 134:9, 11, 18, 19 135:1, 2, 3, 19 136:6, 13, 16, 21 138:22 139:13 140:8, 18, 21, 24 141:7, 8, 11 143:10 Vent's 14:7, 11, 25 30:19 | 31:8 45:11 56:3 60:11 89:22 90:24 97:5 106:11 112:14, 15 116:15 132:13 Verbal 46:10 verbiage 43:25 44:8 verified 31:3 56:2 vice 52:8 video 22:5 View 1:19 24:20 Vinylast 128:16 129:2, 4 violation 83:10 Virginia 22:2 65:22 66:9 75:12, 18 virtually 55:20 virtue 113:3 Volume 30:20 31:13 32:17 37:3, 8 38:6 43:22 121:7 127:25 138:5 vs 1:5 vulnerable 44:10 < W > W08001 111:18 Wait 105:3 112:21 want 14:22 15:23 22:16 28:4 42:19 50:5 51:7 64:25 77:23, 25 78:11 88:19 89:8, 23 104:8 106:5 114:11 115:24 116:14 122:12, 13 123:19 130:19 133:21 144:15 |
|---|---|--|--|--|

| | | | | |
|--|--|--|---|---|
| wanted 10:22 11:3 32:13 101:24 104:22 107:12 wants 46:24 warning 54:13 Washington 12:6 water 16:19 17:18, 18 18:6 23:19 47:3 58:21, 23 127:14, 14 141:9 Watts 110:21 124:6 wavy 87:20, 24 88:25 way 15:12 17:10, 10 34:24 46:22 48:1, 6 75:25 92:14 122:14 132:7 134:25 137:9 ways 23:12 33:9 49:8 we, 72:19 web 75:17 website 42:7, 9, 11, 13, 14, 16, 24 43:8 62:14 75:20 79:3, 14 88:4 90:4, 24 93:2, 6 97:4 websites 42:18 week 20:13 weeks 41:1 well 12:17 20:15 28:16 31:23 34:22 37:16 56:1 61:20 72:10 73:4 81:3 87:6 96:18 99:23 100:12 101:22 102:3 103:9, 18 106:5 113:13 114:24 120:20 121:3, 11 | 128:8 130:7 131:9 133:14 134:2, 15 137:9 139:7 142:16 went 23:14 44:23 57:4 94:14, 16, 16 141:2 We're 7:8, 24 20:12 62:15, 15, 16 67:22 89:21 94:9 106:19 115:13 West 21:19 we've 23:13 26:24 47:24 75:13 91:24 107:15 118:20 129:8, 11, 22 139:6 WHITE 1:18 2:6 7:6 wholesale 142:21, 22 143:3 widespread 98:24 width 73:5 WILLIAMS 1:18 2:6 7:6 willing 20:11, 20 winter 131:6 WITNESS 3:1 7:2 15:5 16:6 26:22 29:4 33:16, 18 36:5, 19, 21 37:14 38:23 49:7, 22 50:16, 21 55:16, 23 61:15 63:20 64:10 65:24 67:12 68:1, 3 72:16 73:1, 17, 22 74:5 76:12 77:8, 21 78:4, 21 89:16, 17 93:23 96:23, 25 98:3, 16, 20 | 100:19 101:19 102:2 103:20 106:3, 25 107:4 112:8, 23 113:10, 17, 24 116:12 117:18 118:2 120:13 123:16 124:25 126:12 129:24 134:4 137:18 139:10, 15 141:20 142:11 145:12 witnessed 51:25 witnesses 50:23 67:8, 17 woman 111:4 wondering 113:6 wooden 17:9, 9 word 81:17 82:3, 3 84:23 87:1, 3 93:7 94:5 97:11, 17 113:24 125:9 words 53:19 79:2 88:15 113:7 work 12:11 27:6, 7, 10 34:20 48:11 70:22, 24 80:7, 14 85:17, 18 109:20 139:6 worked 11:9 52:5 74:2, 6, 8, 16 82:13 111:10 124:14, 16, 17 working 111:10, 12 119:23 works 22:2 44:5 68:16 81:25 82:5 world 41:16 81:20 worldwide 90:25 | wrapper 83:12, 15 write 47:12 66:17 103:23 writes 137:9 writing 46:11 47:14 82:16 94:7 104:19 written 46:14 49:8 74:22 79:2 81:12 88:14 90:12 96:6 102:4 103:2 123:11, 20 wrong 17:3 25:5 50:14, 19, 25 56:10 wrongdoing 61:23 wrote 34:15 75:5 82:1, 6, 17, 20, 24 95:2 96:3 98:21 99:7 101:2 104:8 114:2 < X > XI01497 146:19 < Y > Yeah 9:16 43:24 76:15 77:18 87:17 89:11 92:18 103:6 115:10 116:12 117:11 118:5 121:20 144:25 year 12:7 28:18 45:16 52:15 63:9 108:18 132:19 145:7 years 15:16 18:23 26:24 27:19 28:21 49:18 53:24 60:25 61:21 69:16, 17 | 74:16 75:6 83:24 94:25 95:17 98:4 100:4, 14 103:22 105:10, 20 119:20 138:7 139:6 York 110:17 yourfloodrisk.c om 42:8 43:2 < Z > zone 138:17, 18 |
|--|--|--|---|---|